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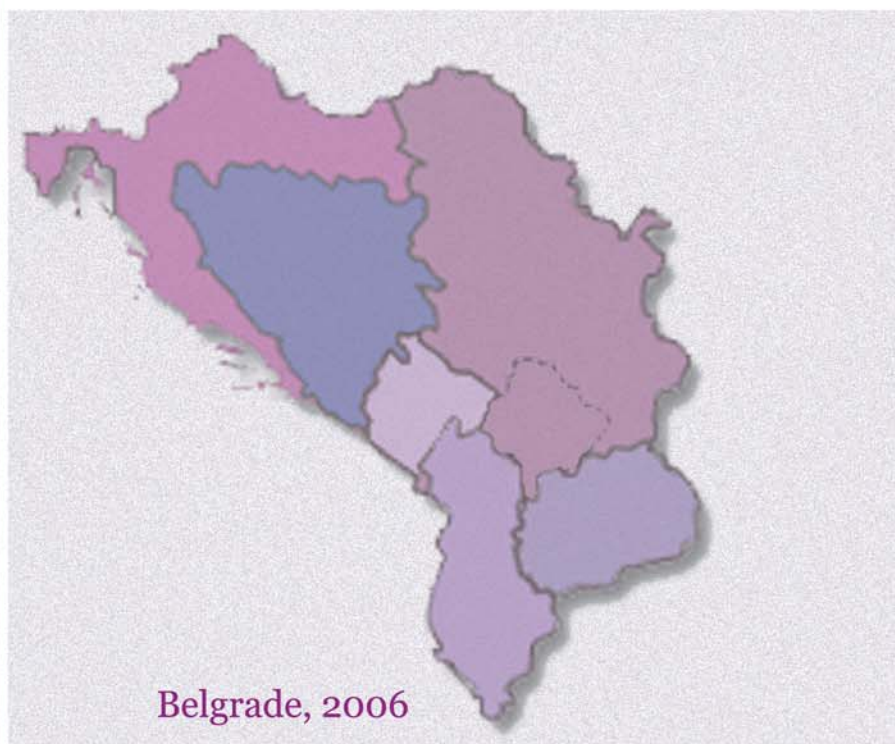
European Movement in Serbia



Group 484

VISA POLICY AND THE WESTERN BALKANS

Edited by Vladimir Grečić



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Edited by
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PREFACE

The most current and relevant issue in relations between the European Union and Western Balkan countries is the visa regime. The EU visa serves as a way of pressuring and motivating the aforementioned countries into meeting the criteria for admission into the Union. On the other hand, Western Balkan countries perceive the pressure as a measure of discrimination, slowing the progress of reforms necessary to meet all requirements.

In the Western Balkans potential candidates for EU membership include Albania, Bosnia and Herzegovina, Serbia and Montenegro, as well as Croatia and Macedonia as current candidate countries. The total number of inhabitants living in the Western Balkans is 24 million (m): Albania (3.2m), Bosnia-Herzegovina (3.8 m), Croatia (4.4 m), Macedonia (2.0 m), and Serbia and Montenegro including Kosovo and Metohija (10.6 m).¹ However, nationals of the southeast area of the Western Balkans cannot enjoy a fundamental freedom, one of which the European Union itself is based: the freedom of movement. Truly, Croatia is on the short stay 'visa white list', which means their nationals can visit EU countries for short stays of up to three months without a visa.

Obstacles in the movement of Western Balkan nationals throughout the EU are clear. The main setback inhibiting the flow of human capital from the Western Balkans to the EU is that five of the six states are on the mandatory EU 'visa black list'. According to a statement from the International Crisis Group, "the EU's present visa regime with the countries of the Western Balkans ... is fostering resentment, inhibiting progress on trade, business, education and more open civil societies, and as a result contributing negatively to regional stability."² The issue of visa liberalization and facilitation and movement of people are directly related to the overall stabilization of the region. Because of the unstable situation in the region since 1990, the "Schengen wall" has been growing thicker and more impenetrable.

¹ European Bank for Reconstruction and Development, *Transition report 2005, Business in transition*, London 2005 (<http://www.ebrd.com/pubs/factssh/country~pdf>).

² International Crisis Group Working to Prevent Conflict Worldwide, "EU Visas and the Western Balkans", *Europe Report* No 168, 29 November 2005.

However, the European Union has been seeking solutions for countries that remained outside the Schengen area in last few years. The Thessaloniki European Council of the 19th and 20th of June, 2003 reiterated that it will fully and effectively support the European perspective of Western Balkan countries and stated that “the Western Balkans countries will become an integral part of the EU, once they meet the established criteria.”

The International Commission on the Balkans reports that: “Among the most discouraging findings of the Commission is that the European generation of the Balkans, young men and women under 30 who share the values of Europe most keenly and who vote for pro-European parties most regularly, are those who experience the greatest difficulties in visiting the EU. More than 70% of students in Serbia have never traveled abroad. The Commission believes that as an urgent matter, this should change. This is most urgent for the youth of countries that have been most isolated from Europe: Serbia and Montenegro, Bosnia, and Albania. Bulgaria and Romania have demonstrated that freedom of movement within the EU is the strongest signal that the EU can send both to the public and to governments in the Balkans.” The Commission furthermore proposes the introduction of a smart EU visa policy: “A smart visa policy of the EU that opens its borders to Balkan youth and Balkan businesses while closing them for criminals should be at the very centre of policies that will mobilize popular support for building EU member states in the Balkans. The Schengen wall is the last wall that separates the Balkans from Europe.”

‘The Western Balkans: Regional Response to Visa Liberalization Issue’ project was jointly implemented by the *Institute of International Politics and Economics* (IIPE), *European Movement in Serbia* (EMinS) and *Group 484*. The project aims to support the reform of Western Balkan countries’ in their approximation toward EU standards, and especially in their efforts to join EU ‘white Schengen list’, as well as to further strengthen and support measures, activities, initiatives towards visa liberalization that are already being launched or implemented in the region. Constituent objectives are:

- a) To develop recommendations to governments in the region for the reforms necessary in the domain of free movement;
- b) To exert pressure and influence governments to conduct reforms and legal harmonization, as well as the efficient implementation of these reforms;
- c) To create a network of dedicated experts and stakeholders at the national and regional level;
- d) To create an increasingly active collaboration between the government and civil society;
- e) To promote political reform, civic education, and the monitoring of a governments’ performance;
- f) To ensure greater transparency of government institutions so that citizens may hold governments accountable for their actions.

According to the results of the project the implementation these activities will contribute to:

- a) The creation of a sustainable network of experts, as well as government employees, NGO activists, politicians, and media at the national level, and,
- b) The creation of the same type of network at the regional level.

These changes will be brought about as follows:

- a) A better understanding of the required preconditions with regard to the visa liberalization process;
- b) Pressure on relevant governments to strengthen the efforts needed in the process of visa liberalization;
- c) Stimulation of a joint regional approach — a unified response to the issue.

Stronger cross-border cooperation among civil society groups, the sharing of best practices, networks linking like-minded citizens, and networks among governments, NGOs, and civic initiatives are all necessary to improve understanding and co-operation throughout the region, and are furthermore, in line with long-term goals fostering regional academic, research, and policy collaboration.

During the implementation of the project, different sectors of civil society and state institutions are actively involved. Moreover, they are key promoters of the changes to be produced, and the main guarantors that the defined regional map will be implemented and, if needed, upgraded.

Four national workshops held from January to April 2006. ‘The Balkans as an Emigration, Transit and Immigration Area Moving Toward the EU’, was held on the 25th of January 2006 at the Institute of International Politics and Economics, where issues surrounding illegal migration, human trafficking, asylum, corruption, and the fight against organized crime were discussed. The second workshop, ‘European Integration and Readmission’, was held on the 20th of February 2006 to consider the problems and processes of European integration as well as those issues concerning the implementation of the Agreement on Readmission. The third workshop, ‘European Integration and the Reform of the Visa System in Serbia and Montenegro’ was held on the 13th, March 2006. The fourth workshop, ‘Border Control/Integrated Border Management and EU Standards’ was held on 12th of April 2006.

Finally, the Regional Roundtable held on the 18th and 19th of May 2006, ‘The Western Balkans: Regional Response to Visa Liberalization Issue’, gathered experts from Balkan countries – Albania, Bosnia and Herzegovina, Serbia and Montenegro (representing potential candidates for EU membership), Macedonia and Croatia (representing candidate countries), Bulgaria and Romania (representing acceding countries) as well as Slovakia (the new EU member state), who presented their experiences on the road to the ‘white Schengen list’. The following topics were discussed:

- a) Illegal migration, including human trafficking and asylum;

- b) Readmission agreements as a tool in the battle against illegal migration, and cooperation of EU member states with the countries of origin consequently building the sustainable solutions;
- c) The current visa system and relevant EU standards;
- d) Border control/integrated border management and EU standards;
- e) Regional cooperation;

The authors' findings can be outlined as follows: the Schengen regime is a part of the wider European project of creating a single market and free movement of citizens within the European Union by abolishing internal border controls. The natural outcome of this internal liberalization had been stricter and more concentrated external border controls. In a 2001 regulation, updated in 2003, the EU council listed those countries whose nationals do not require a visa (the white list) and those who do (the black list).³ Those countries on the black list are implicitly not trusted as their citizens are viewed as potential large-scale immigrants.⁴ In fact, illegal migration into the EU is one of the main criteria for determining whether a country will be placed on the positive or negative list. The problem is with the countries' "ability to efficiently control the illegal migration of its own nationals and aliens who pass through its territory en route to the EU".

The complications are multifaceted but the foremost problems are: human trafficking, smuggling, and the issue of readmission. The Western Balkan region is linked by poverty, misery and the shadow economy. Consequently, these states have become connected by transnational organized crime. Because crime is not selective about the nationality or religion of people, it brings together those who feel a sense of purpose in profiting from misery, there is a distinct need for comprehensive reforms in the rule of law, corruption, and illegal migration.

Establishing integrated border management means a permeable border, one capable of distinguishing between the legitimate movement of people and goods, and illegal activities ranging from the smuggling of goods to human trafficking. Border management must be reformed in order to meet EU standards, but also to improve regional movement. Regional cooperation is essential in preparing for integration into the EU.

The papers submitted at the national workshops and Regional Roundtable conference have been published in this book.

Vladimir GREČIĆ
Project Manager

³ See Council Regulation (EC) No. 539/2001 of 15 March 2001 listing the third countries whose nationals must have visas when crossing the external borders (Annex I) and those whose nationals are exempt (Annex II), updated in Council Regulation (EC) No. 453/2003 of 6 March 2003.

⁴ The Schengen countries follow a rule of reverse reciprocity: if a country on the white list requires the nationals of an EU member state to get a visa, it will be moved to the Schengen black list. However, a country on the black list will not be transferred to the white list for granting visa-free entry to EU citizens. Council Regulation (EC) No 539/2001, Article 1.4.

I — BALKAN MIGRATION AND THE CAMPAIGN AGAINST ILLEGAL MIGRATION

BALKAN COUNTRIES AND MASS MIGRATION TO THE EUROPEAN UNION: NOTABLE DEMOGRAPHIC CHARACTERISTICS

by

Vladimir Grečić¹

Introduction

In fact all the countries of the continent, except Norway and Switzerland, strive to join the integration group. Its policy in the last years has contributed to the acceleration of transformation in Central and Eastern Europe from communist regimes to modern, functional democratic states. It has *de facto* prompted the speeding up of the reforms in Turkey and Croatia, and before that in Bulgaria and Romania, and in the other countries of the Western Balkans, including Serbia and Montenegro. The citizens of this part of the world benefit from their neighbors, countries with stable democracy and a prosperous market economy. The EU enlargement implies improvement in peace, stability, prosperity, democracy, human rights and the rule of law throughout Europe.

Ten new members (Czech Republic, Hungary, Poland, Slovakia, Slovenia, Estonia, Latvia, Lithuania, Malta and Cyprus) joined the EU on May 1st, 2004, and the agreements were signed with Bulgaria and Romania in April 2005. In October of the same year, the EU opened accession negotiations with Croatia and Turkey, and negotiations on Stabilization and Association Agreement with Serbia and Montenegro. Each of these events is justified by the progress the countries made in fulfilling the relevant conditions.

The EU Strategic Document on Enlargement (561) from November 9th, 2005 states, among other things, that the last enlargement of the EU “has not brought considerable changes in the area of movement of people and the right of individuals to found firms”.

¹ Institute of International Politics and Economics, Belgrade.

The intention of this article is to analyze human resources in European countries, with a special emphasis on the countries aiming to join the European Union (EU), and to make an overview of emigration potential as well as possible threats of intra-illegal migrant flows and migrant flows towards the EU.

Human resources in the countries of the last and next rounds of the EU enlargements

The last enlargement have brought close to 74 million people to the EU (Table 3). What is characteristic for these countries is the fact that they all share a low population growth rate. Poland, whose citizens went to temporary or permanent work to Germany even before, is the biggest in the group with 38.2 million people. So, the emigration pressure for the new member states is more stable than was expected. However, in the rest of Balkan countries, which are waiting for EU Enlargement and which are hoping to join it in the days to come, have a one and a half times larger population and therefore, bigger emigration potential. Bulgaria and Romania, countries accessing to the EU have a population of close to 30 million people, but also have low or negative population growth.

Croatia and Turkey, which opened accession negotiations have, according to data from 2005, a total population of over 75 million, and Macedonia has a population of over 2 million. What is characteristic is that Turkey has over 71 million people and still has a high population growth rate (Table 5), and registered emigration, in UN publications, of around 10,000 a year.²

The rest of the Western Balkan countries have more modest human potential. According to UN data from 2005, these countries together had slightly less than 18 million people. The population structure is different, and the emigration is different. The biggest number of potential migrants is in Albania and Kosovo and Metohija, because those areas have the highest participation of youth.³

Five Countries of the Western Balkans as a Challenge for the EU

Even though Macedonia has become a candidate for EU membership, it still has not gotten onto the so-called White Schengen list. Its citizens still have to wait in lines for Schengen visas. So, the five countries of the Western Balkans (Albania, Bosnia and Herzegovina, Macedonia, and Montenegro and Serbia including Kosovo and Metohija) present a great challenge for the EU. Enlargement policy needs to demonstrate *de facto* the ability for transformation in the region in which the states are weak and societies divided. A perspective of the final accession to the EU is of the

² UN, *World Population Prospects*. The 2000 Revision, vol. I: Comprehensive Table, United Nation, New York 2001, p. 442.

³ Article 4996 of the *Treaty of European Union*.

utmost importance for the carrying out the reforms in these countries. However, it is clear that these countries will join the EU only when they fulfill the established criteria.

The European Union has political and economic criteria for membership, as well as criteria which refer to the obligations of member states and administrative ability to implement and carry out laws and policies of the EU.⁴

Table 1: The process of EU accession

Bulgaria		“The realistic scenario”	“The reform scenario”
		Serbia, Montenegro, Bosnia, Albania	Serbia, Montenegro, Bosnia, Albania
1993	Association Agreement	2006	2006
1995	AA enters into force	2008	2007
1995	Membership application	2008	2007
1997	Candidate status	2010	2008
2000	Opening negotiations	2013	2009
2004	Closing negotiations	2017	2013
2007	Membership	2020	2014-2015
14 years	Total	14 years	8-9 years

Source: Breaking out of the Balkan Ghetto: Why IPA should be changed”, *ESI – European Stability Initiative*, Brussels, 1 June 2005 (www.esiweb.org), p. 11.

Four countries of the Western Balkans will, according to the realist scenario,⁵ join the EU in 2020, and according to the reformist scenario, in 2015.

These scenarios show that the countries of the Western Balkans will remain isolated from the integrated and developed Europe for a long time. Whether they will fulfill the conditions and become members of the EU in 2015 or 2020 depends on themselves, but also on the European Union and its assistance — material and any other. The EU’s budget illustrates the following areas of assistance in countries of the Western Balkans (Table 2).

The EU Summit in Thessaloniki on June 21st, 2003, among other things, concluded that “the map of the Union will not be complete until the Western Balkans join”.⁶ The Stabilization and Association process will, as it was stated, be enriched with the elements that will come from the enlargement process, including the expansion of the support for institutional capacity building, the rule of law, and cooperation in areas of justice and internal affairs.

⁴ Conclusions of the European Councils in Copenhagen 1993, and Madrid 1995.

⁵ “Breaking out of the Balkan Ghetto: Why IPA should be changed”, *ESI – European Stability Initiative*, Brussels, 1 June 2005 (www.esiweb.org)

⁶ Chris Patten, Commissioner for External Relations, “A milestone in the European Union’s relations with the Western Balkan countries”, at, http://europa.eu.int/comm/external_relations/sec/sum_06_03/

**Table 2: Planned assistance for potential candidates, 2007-2013
(in million Euros)**

States	Population	2007	2008	2009	2010	2011	2012	2013	Total
Serbia	8.0m	113	138	117	159	234	233	220	1,214
Kosovo	1.8m	25	31	26	35	52	52	49	270
Montenegro	0.6m	10	12	10	14	21	21	20	108
Albania	3.2m	45	55	47	63	94	93	88	485
Bosnia-Herzegovina	4.1m	59	71	60	82	119	118	113	622
Total	17.8m	252	307	260	353	520	517	490	2,699
<i>Per capita</i>		<i>€14.16</i>	<i>€17.25</i>	<i>€14.61</i>	<i>€19.83</i>	<i>€29.21</i>	<i>€29.04</i>	<i>€27.53</i>	

Source: Breaking out of the Balkan Ghetto: Why IPA should be changed”, *ESI – European Stability Initiative*, Brussels, 1 June 2005 (www.esiweb.org), p. 5.

The participation of these countries in the Union’s programs and economic development implies that the CARDS budget will increase, bigger regional cooperation and efforts to strengthen democracy, parliamentary and political cooperation increase.

The current EU visa regime towards the countries of the Western Balkans (Albania, BiH, Macedonia, Montenegro and Serbia including Kosovo and Metohija) adds to people’s bitterness, slows down the process of foreign trade, business, education and a more open civil society, and as a result, contributes to regional instability.⁷ The full visa regime liberalization for everybody will most probably have to wait until all of the Balkan countries come closer to EU membership. However, selective liberalization for certain groups of people and the facilitation of issuing visas to all applicants including simplifying and expediting the issuing would help further reforms. It would also support the necessary economic reforms. According to 2003 data, the GDP of 5 of the Western Balkan countries reached only 8% of the EU’s average. Given data shows part of the population below the poverty level.⁸

- Albania — 25% of the population lives below poverty level (2004 data).
- Bosnia and Herzegovina — 25% of the population lives below poverty level (2004 data)
- Macedonia — 30.2% of the total population lives in poverty (2003 data).
- Serbia and Montenegro — 29% of the population lives below poverty level (2004 data)

The rate of unemployment in the 5 countries of the Western Balkans is also high.⁹

⁷ International Crisis Group Working to Prevent Conflict Worldwide, “EU Visas and the Western Balkans”, *Europe Report* No 168, 29 November 2005.

⁸ International Crisis Group Working to Prevent Conflict Worldwide, “EU Visas and the Western Balkans”, *Europe Report* No 168, 29 November 2005.

⁹ International Crisis Group Working to Prevent Conflict Worldwide, “EU Visas and the Western Balkans”, *Europe Report* No 168, 29 November 2005.

- Albania around 30% (2004)
- BiH around 24% (2004)
- Macedonia around 37% (2004), and
- Serbia and Montenegro around 30%, and Kosovo close to 50% (2004)

This further stimulates an active work force to emigrate.

The economic and political situation in the countries of the Western Balkans is not enviable. However, the reform process in the area of visas and other factors which determine visa regimes are overlapping with the process of negotiating and implementing agreements with the European Union. One is conditional upon the other. Abolishing visas from the side of the European Union for the citizens of these countries will come after prescribed conditions are met. Before that, the issue of migration control has to be an integral part of reforms comprehensive reforms. The questions of illegal migration must be solved with the countries which are involved in it. Full attention needs to be paid to combating illegal migration. This means that measures need to be taken which would prevent illegal migration of foreigners towards the EU, including transit migration.

Literature recognizes three types of international migration of the work force:

- permanent migration
- temporary migration, and
- brain drain (migration of a highly qualified work force).

In the global economic order the demand for migrant workers as a source of cheap labor, together with restrictive and non-existent immigration policies, create conditions for the fourth type of migration – illegal migration.¹⁰

External migration politics should be based on standards set by the European Union. Also, as long as the number of economic migrants who are accepted to the EU for reasons of employment is the responsibility of member states, it is clear that the entrance of citizens of third countries in one of the EU member states can affect other countries of the Union and their labor markets.

The politics of effective migration cannot be limited to instruments for accepting immigrants. Other equally important legal and operational measures are necessary, having in mind that immigration presents a complex phenomenon which imposes the need for seeing all its dimensions. On one hand there is the integration of economic migrants and measures for their integration, and the fight against illegal immigration and employment, including trafficking, on the other. In that context, the EU intensifies its efforts to reduce informal economy, which is considered to be a “pull factor” for illegal immigration as well as one of the catalysts for exploitation. Pointing out the importance of this issue, a special Communication of European Communities, which sets future priorities in the area of illegal immigration, was issued.

¹⁰ Commission of the European Communities, *Communication from the Commission. Policy Plan on Legal Migration* (SEC(2005)1680), Brussels, 21. 12. 2005, COM(2005)669 final.

**Table 3: Population projections for the EU25 + Bulgaria and Romania:
total population**

Member States	Population at 1 January (1000 inhabitants)				Percentage increase with respect to 1.1. 2004		
	2004	2015	2025	2050	2015	2025	2050
EU – 25	456 815	467 307	470 057	449 831	2.3	2.9	-1.5
EU – 15	882 674	394 727	398 780	384 356	3.1	4.2	0.4
New Member States	74 141	72 580	71 278	65 475	-2.1	-3.9	-11.7
Belgium	10 396	10 674	10 898	10 906	2.7	4.8	4.9
Czech Republic	10 212	10 012	9 812	8 894	-2.0	-3.9	-12.9
Denmark	5 398	5 498	5 557	5 430	1.9	2.9	0.6
Germany	82 532	82 864	82 106	74 642	0.4	-0.5	-9.6
Estonia	1 351	1 279	1 224	1 126	-5.3	-9.4	-16.6
Greece	11 041	11 390	11 394	10 632	3.2	3.2	-3.7
Spain	42 345	45 264	45 556	42 834	6.9	7.6	1.2
France	59 901	62 616	64 392	65 704	4.5	7.5	9.7
Ireland	4 028	4 555	4 922	5 478	13.1	22.2	36.0
Italy	57 888	58 630	57 751	52 709	1.3	-0.2	-8.9
Cyprus	730	828	897	975	13.3	22.8	33.5
Latvia	2 319	2 174	2 068	1 873	-6.3	-10.8	-19.2
Lithuania	3 446	3 258	3 134	2 881	-5.5	-9.1	-16.4
Luxembourg	452	499	544	643	10.4	20.5	42.3
Hungary	10 117	9 834	9 588	8 915	-2.8	-5.2	-11.9
Malta	400	439	468	508	9.8	17.0	27.1
Netherlands	16 258	16 957	17 429	17 406	4.3	7.2	7.1
Austria	8 114	8 358	8 501	8 216	3.0	4.8	1.3
Poland	38 191	37 429	36 836	33 665	-2.0	-3.5	-11.8
Portugal	10 475	10 762	10 730	10 009	2.7	2.4	-4.4
Slovenia	1 996	2 019	2 014	1 901	1.1	0.9	-4.8
Slovakia	5 380	5 309	5 237	4 738	-1.3	-2.7	-11.9
Finland	5 220	5 354	5 439	5 217	2.6	4.2	-0.1
Sweden	8 976	9 373	9 769	10 202	4.4	8.8	13.7
United Kingdom	59 652	61 934	63 792	64 330	3.8	6.9	7.8
Bulgaria	7 801	7 130	6 465	5 094	-8.6	-17.1	-34.7
Romania	21 711	20 917	19 746	17 125	-3.7	-9.1	-21.1

Source: Commission of the European Communities, *Communication from the Commission. Policy Plan on Legal Migration* (SEC(2005)1680), Brussels, 21. 12. 2005, COM(2005)669 final, p. 23.

**Table 4: Population projections for the EU25 + Bulgaria and Romania:
population structure – main age groups**

Member States	Percentage aged 0-14			Percentage aged 15-64			Percentage aged 65 +		
	2004	2025	2050	2004	2025	2050	2004	2025	2050
EU - 25	16.4	14.	13.4	67.2	63.0	56.7	16.4	22.6	29.9
EU - 15	16.3	14.4	13.5	66.7	62.8	56.5	17.0	22.8	30.0
New Member States	16.7	14.4	13.2	69.7	64.5	57.7	13.6	21.1	29.1
Belgium	17.3	15.6	14.7	65.6	61.9	57.6	17.1	22.5	27.7
Czech Republic	15.2	13.5	12.6	70.8	64.1	56.5	14.0	22.4	30.9
Denmark	18.9	15.9	15.7	66.2	62.9	60.2	14.9	21.2	24.1
Germany	14.7	12.9	11.9	67.3	62.5	56.5	18.0	24.6	31.6
Estonia	16.0	16.2	14.8	67.9	63.9	59.6	16.1	19.9	25.6
Greece	14.5	13.3	12.3	67.7	63.9	55.2	17.8	22.8	32.5
Spain	14.5	12.8	11.5	68.6	65.2	52.9	16.9	22.0	35.6
France	18.6	16.7	15.8	65.1	60.9	57.0	16.3	22.4	27.2
Ireland	20.9	18.2	16.0	68.0	65.3	57.8	11.1	16.5	26.2
Italy	14.2	12.1	11.2	66.6	62.9	53.5	19.2	25.0	35.3
Cyprus	20.0	15.6	13.3	68.1	65.2	60.5	11.9	19.2	26.2
Latvia	15.4	16.2	14.8	68.4	64.1	59.1	16.2	19.7	26.1
Lithuania	17.7	15.1	13.7	67.3	65.7	59.6	15.0	19.2	26.7
Luxembourg	18.8	17.1	16.6	67.1	64.9	61.3	14.1	18.0	22.1
Hungary	15.9	14.3	13.8	68.6	63.7	58.1	15.5	22.0	28.1
Malta	18.2	15.6	14.5	68.7	63.1	60.8	13.1	21.3	24.7
Netherlands	18.5	16.1	15.8	67.6	63.3	60.7	13.9	20.6	23.5
Austria	16.3	13.8	12.3	68.2	64.1	57.3	15.5	22.1	30.4
Poland	17.2	14.6	13.0	69.8	64.3	57.6	13.0	21.1	29.4
Portugal	15.7	14.2	13.1	67.4	63.7	55.0	16.9	22.1	31.9
Slovenia	14.6	13.4	12.8	70.4	63.8	56.0	15.0	22.8	31.2
Slovakia	17.6	14.0	12.8	70.9	67.1	57.9	11.5	18.9	29.3
Finland	17.6	16.0	15.3	66.8	59.4	57.8	15.6	24.6	26.9
Sweden	17.8	17.1	16.3	65.0	60.7	59.4	17.2	22.2	24.3
United Kingdom	18.3	16.1	14.7	65.7	63.0	58.7	16.0	20.9	26.6
Bulgaria	14.2	11.7	11.5	68.7	64.5	55.0	17.1	23.8	33.5
Romania	16.4	14.1	12.5	69.1	66.9	57.9	14.5	19.0	29.6

Source: Commission of the European Communities. *Communication from the Commission. Policy Plan on Legal Migration* (SEC(2005)1680). Brussels. 21. 12. 2005. COM(2005)669 final. p. 24.

According to it, the Communication of the European Communities (SEC(2005)1680) commences initiatives for the development of all these areas, including cooperation with the countries of origin of migrants. In the development of various initiatives, due attention will be dedicated to gender equality, with a special attention to the protection of the most vulnerable groups.

With regard to economic immigration, the present state and perspectives in the labor market in the EU can be simply explained as a scenario of one “need”. Some member states already felt the lack in labor force and experts in some sectors of the

economy which cannot be eliminated within national labor markets. This phenomenon applies to all professions — from non qualified workers to academic experts.

Emigration potential of the Balkans

Eurostat projections show that “the growth in population until 2025 will mainly be due to net migration, because from 2010 the total number of deaths will consistently overcome the total number of births. The effect of net migration will not be more important than the natural decrease in the number of population after 2025.” This will have serious repercussions on the number of population employed in 25 EU member states, since, according to the projections, “the share of working age population (15-65 years old) will decline sharply, from 67.2% in 2004 to 56.7% in 2050”.¹¹ There is a working age population of more than 52 million. So, a decrease in the total number of population is expected until 2025, and of the working age population until 2011. This draws a conclusion that the Balkan countries, which are expecting accession to the EU, be the area from which the work force will come until the middle of this century. However, the countries of the EU will control the migration in the years to come.

Conclusion

The analysis of the scope and structure of human potential in the countries of the Western Balkans brings us to at least four conclusions:

- First, the countries of the Western Balkans, which are potential candidates for membership in the EU, have a more modest human potential.
- Second, there is a difference in population growth rate which is, largely, determined by historical, ethnic and religious heritage. Parts of the Western Balkans with a Muslim population still have a very high population growth rate, a large part of the population is between 0-14 years of age, there is a high participation rate of the male population, and they present the biggest emigration pressure for some countries. Albania and the Serbian southern province have, during the 1990s and now, presented the most dynamic sources of legal, but mostly illegal, migrations towards the EU member states.
- Third, illegal migration in the region of the Western Balkans are, mostly, a part of transit migration which gravitate in the direction of the European Union. Albanians from Albania and Albanians from the province of Kosovo and Metohija use mixed types of migration. When it comes to Serbia (without the province of Kosovo and Metohija) and Montenegro, analyses show that illegal migration are brought to the lowest level during the harvest season. With the tendency decreasing, there is illegal migration in the form of transit and

¹¹ Commission of the European Communities, *Communication from the Commission. Policy Plan on Legal Migration* (SEC(2005)1680), Brussels, 21. 12. 2005, COM(2005)669 final, p. 4.

**Table 5: Population projections for the selected Balkan countries:
total population**

States	Population at 1 January (1000 inhabitants)				Percentage increase with respect to 1.1. 2005		
	2005	2015	2025	2050	2015	2025	2050
Albania	3 234	3 439	3 676	3 905	6.3	11.4	12.1
Bosnia and Herzegovina	4 209	4 279	4 165	3 458	1.7	-1.0	-18.0
Serbia and Montenegro	10 475	10 309	10 044	9 030	-1.6	-4.1	-13.8
Subtotal	17 918	18 027	17 885	16 393	0.6	0.2	-8.5
Croatia	4 661	4 622	4 519	4 179	-0.8	-3.0	-10.3
Macedonia	2 064	2 075	2 067	1 894	0.5	0.1	-8.2
Subtotal	6 725	6 697	6 586	6 073	-0.4	-2.1	-9.7
Turkey	71 209	79 004	86 611	98 818	11.1	12.2	13.9
Total	95 852	103 728	111 082	121 284	8.2	15.9	26.5

Source: Department of Economic and Social Affairs Population Division. *World Population Prospects. The 2000 Revision. Vol. II.* United Nations. New York. 2001. pp. 177-909.

**Table 6: Population projections for the selected Balkan countries:
population structure – main age groups**

States	Percentage aged 0-14			Percentage aged 15-64			Percentage aged 65 +		
	2005	2025	2050	2004	2025	2050	2004	2025	2050
Albania	27.2	21.9	19.0	67.2	67.3	62.7	6.7	10.9	18.3
Bosnia and Herzegovina	15.8	72.4	11.8	13.3	67.1	19.6	13.0	57.9	29.1
Serbia and Montenegro(a)	18.1	15.5	15.2	67.8	66.3	59.8	14.1	18.2	25.0
Croatia	17.3	16.2	16.3	67.0	63.8	59.4	15.7	20.0	24.3
Macedonia	20.0	14.8	14.1	69.0	68.5	59.8	11.0	16.7	26.1
Turkey	29.1	22.5	19.5	64.7	68.0	62.6	6.2	9.5	17.9

(a) Including Kosovo and Metohija.

Source: Department of Economic and Social Affairs Population Division. *World Population Prospects. The 2000 Revision. Vol. II.* United Nations. New York. 2001. pp. 177-909.

smuggling people. The possibilities for illegal migration are also brought down to the lowest possible level. It is through this that the research shows that the “push factors” are much stronger in Serbia than the “pull factors”, but these apply to the category of highly qualified work force, which is not a big concern from the point of view of EU member states. On the contrary, these countries encourage this category of migration.

- Fourth, data from the UN High Commissioner for Refugees (2004) show that internally displaced people are concentrated in three countries of the Western Balkans: Bosnia and Herzegovina (327.200), Croatia (12.600) and Serbia and Montenegro (256.900). The same source points out that, at the same time,

318.500 refugees were registered: in Bosnia and Herzegovina 22.500 (19.500 from Croatia and 3.000 from Serbia), in Croatia 4.400 (500 from Serbia and 3.500 from Bosnia and Herzegovina), in Macedonia 200 (all from Serbia) and in Serbia and Montenegro 291 400 refugees (187 770 from Croatia and 99 800 from Bosnia and Herzegovina).

The movement of people in the region of the Western Balkans indicates the need for action, both on national and regional plans.

On the national plan, Serbia and Montenegro needs to: redefine mutual relations in all areas which concern the movement of people, manage these movements, and adopt standards set by the EU. The processes of reform in the area of visas and other things which establish the visa system overlap with the negotiation process and implementation of the agreements with the European Union. It is understood that the issue of control and management of migration must be a part of the reforms. The issues of illegal migration have to be solved with the countries which are involved in them. The International Labor Organization defines an illegal immigrant as a person who, for illegal entry in the country of the expired visa does not have legal status in the transit or receiving country. This applies to migrants who broke the law on entering of the foreign citizens of the host country, seek asylum without legal reason and any other person who does not have the right of residence in the given country. Therefore, full attention should be paid to combating illegal migration. This means that measures should be taken which would be in function of preventing illegal migration of foreigners towards the EU, including transit migration. Measures and activities must be based on the Information of the Commission on Common Politics in Issue of Illegal Immigration (COM(2001)672, final version, 15/11/2001) in which the Council of the European Union calls for putting together a common Action plan for combating illegal immigration, pointing to the activities which have to be a priority. Those are activities in the area of visa policy, information exchange and analysis, pre-border measures, border management, readmission and return policy, measures expanding the role of Europol and sanctions.

On the regional plan, it is needed to have intergovernmental dialogues and cooperation in the area of work and other kinds of migration, cooperation of employers organizations and trade unions, researchers and others. Exchange of information between the countries is of particular importance. It should be done both on bilateral and regional level, through already existing regional organizations (MARRI and others). Bilateral and multilateral agreements between countries of origin and countries of destination, which include various forms of movement of people should be improved. The regional policy in the fight against illegal immigration needs to be a priority of all subjects in the region. Finally, cooperation in the area of migration research in the countries of the Western Balkans needs to be improved.

SEEKING THE VIRTUOUS CIRCLE: MIGRATION AND DEVELOPMENT IN THE BALKANS

by

*Alina Mungiu-Pippidi*¹

Executive summary

Reliable data on migration has been largely missing in Southeastern Europe. Each country in the region has developed its own system of measuring population movements, which often makes it difficult to aggregate data across countries or make valid comparisons. This report aims to fill the void. It is the first UNDP cross-regional attempt at summarizing data from individual countries to capture current migration trends.

The main finding of this report is that people in Southeastern Europe don't move as much as is presumed — or feared — in the West. Just 3 per cent of Romanians, 4 per cent of Bulgarians, and only 2 per cent of Macedonians would settle permanently abroad. The large majority of people in these countries would not even travel at all, let alone for work, if given the opportunity. The survey shows that 88 per cent of Romanians have never travelled to a neighbouring country. Fifty-eight per cent have not made it as far as Bucharest, the national capital, and 41 per cent, most of whom are peasants, have not travelled to the capital of their county. Eighty-four per cent of Bulgarians have never been to a distant foreign country and 78 per cent have not travelled to a neighbouring country. Even if Schengen visas are lifted for the Western Balkan countries, as they have been for Romania and Bulgaria, the large majority of the population would not even travel, not to speak of settling abroad.

¹ This report is authored by Alina Mungiu-Pippidi, UNDP consultant for Early Warning Systems and post conflict environments. The comparative regional survey quoted here, as well as the work of the team, was funded by UNDP RBEC. Contributions were received from individual country teams producing UNDP Early Warning Reports in Macedonia, Romania and Kosovo. Survey data from EWR Albania 2004 was also used. The views and recommendations expressed in this article are those of the author and do not necessarily represent those of the United Nations or UNDP.

The report finds that there are positive economic effects of migration, both for the sending and receiving countries. A recent study finds that migration to the West of 1 per cent of the population from the new member states would increase aggregate GDP in the sending and receiving countries by 0.2 to 0.3 per cent respectively. Evidence from Albania, Romania and Bulgaria shows that the money which migrants send home prevents a large number of people from falling below the poverty threshold, contributes modestly to local development as well as boosts consumption spending, which contributes to the high rates of growth in these three countries.

From forced to voluntary migration

After the Berlin Wall fell in 1989, many observers expected a wave of mass migration from the East to the West. The per capita GDP of the new member states was just 49 per cent of incomes in the EU-15, and in the Balkans was less than a quarter.² However, the expectations turned out to be overblown. Cumulative net emigration since 1989 from the eight new member

states and the two accession candidates (Bulgaria and Romania) to the EU is estimated at only 1.1 million people, just 1 per cent of their population.³

The EU visa regime for Central and Southeastern Europe varies: The European Union lifted the Schengen visa regime for Bulgaria and Romania in 2000 and 2001 respectively, thus removing a main barrier to travel in Europe. Croatia has enjoyed bilateral agreements with various European countries, which allow its citizens considerable freedom of travel. The other Western Balkans countries, as well as Turkey, are separated from Europe, both old and new (since EU candidates are compelled to introduce visas for their neighbours), by the means of Schengen visas and increasingly tighter border controls.

The 1990s were a period of political upheaval, particularly in Southeastern Europe during and after the collapse of communism and the dismantling of the former Yugoslavia. Since 1989, between 10 and 15 per cent of the population of the Balkan countries was displaced in one way or another. About 15 per cent of Albanians allegedly live abroad; the figure might be double for Bosnia, although this battered country has also seen important numbers return. The massive population movement which resulted was only the last of a long series in Balkan history. The Ottoman Empire practiced frequently the displacement of entire populations on political or economical grounds, and the current demography of the Balkans still bears the traces of this policy. In more recent times as well, millions of people were forced to become refugees in other countries or internally displaced persons (IDPs). Others deserted voluntarily the chaotic societies which resulted from civil wars and contested secessions. Some emigrated or applied for political asylum in Western countries.

² Figures are PPP (parity purchase power). Eurostat data, 2003.

³ OECD (2003): Trends in International Migration, Paris: OECD.

Migrants from the Eastern Balkans were initially considered ‘refugees’, which entailed a greater degree of rights, but were later downgraded to ‘economic migrants’ once the region stabilized in the late 1990s. As the pressure grew to curtail immigration, Western European governments tightened entry requirements. As a result, more people tried to enter illegally, either travelling on their own initiative or with the help of smugglers.

Many refugees returned voluntarily with the help of the UN’s refugee agency, UNHCR, and the International Organization for Migration (IOM). In Bosnia, the number of returning IDPs and refugees reached 1 million in July 2004 out of 2.2 million displaced by the war (see Table 1). But the picture is not all bright. For example, according to 2005 UNHCR data, Serbia and Montenegro, primarily through Kosovo, remains the second largest source of asylum seekers in the European Union after the Russian Federation.

**Table 1. The legacy of the 1990s.
Displaced persons in the first quarter of 2005**

Bosnia and Herzegovina	Numbers	Serbia and Montenegro	Numbers
IDPs	309 200	IDPs	248 200
Refugees outside country	100 000	Croatia refugees	180 100
Croatia refugees in country	19 200	B&H refugees	95 300
Returned IDPs in country	17 900	Local residents at risk	85 000
Serbia and Montenegro refugees in country	3 000	Germany returnees	3 000
Various countries returnees in country	1 560	Switzerland returnees	900
Serbia and Montenegro returnees in country	880	FYR Macedonia refugees	800
Serbia and Montenegro asylum seekers in country	400	FYR Macedonia asylum seekers	400

Source: UNHCR 2005

Besides the voluntary resettling of refugees — following bilateral agreements — some unsuccessful asylum seekers have started to be repatriated to their original countries. The movement of people is largely responsible for the yearly variation in population growth. With the exception of Albania, the rest of the region has negative natural growth rates. (see Table 2).

The present report is the first UNDP cross-regional attempt at summarizing data from individual countries to capture current migration trends. It draws mostly on data collected by UNDP-supported teams in Macedonia, Kosovo and Romania in 2005, and on a regional EU Fifth Framework Programme Survey ‘Integrating

the Balkans in the European Union (IBEU) in Bulgaria, Macedonia, Serbia and Montenegro' by BBSS Gallup International in 2003 and in Romania by the Centre for Regional Studies (CURS).⁴ It also draws on secondary analysis using data from organizations such as the International Organization of Migration (IOM), the Council of Europe, as well as from country research teams.

Table 2: Evolution of population growth in the Balkans

Country	Population (million)	Population growth (annual %)				
	Year	1999	2000	2001	2002	2003
Albania	3.1	-0.03	0.4	0.59	0.59	0.59
Bosnia and Herzegovina	3.9	Feb. 83	Feb. 65	Jan. 99	Jan. 34	0.68
		3 873 060	3 977 000	4 057 056	4 111 688	4 139 835
Bulgaria	8	-0.6	-1.83	-1.88	-0.52	-0.59
Croatia	4.4	..	-3.81	..	0	0.1
Macedonia, FYR	2.1	0.45	0.45	0.44	0.15	0.54
Romania	22	-0.2	-0.07	-1.4	-1.5	-0.27
Serbia and Montenegro	8.4					
		0.11	0.04	0.13	-23.39	-0.69
Kosovo	1.9					

Source: World Bank.

Reliable hard comparative data on migration is lacking. Each country has developed a system of migration measurement based on its own particular requirements, which makes it difficult to aggregate data across Europe or make valid cross-country comparisons. Information based on public opinion surveys is also scarce: Eurobarometers miss Western Balkan countries, focusing on accession countries only. The surveys presented in this report try to fill this void.

How many migrants?

The UN Population Division defines a migrant as someone outside his or her country of birth or citizenship for 12 months or more. At present, some 175 million people, or roughly 3 per cent of the world's population, are migrants who have lived outside their countries of birth or citizenship for a year or more. This number roughly doubled between 1975 and 2000.⁵ These migrants include refugees and asylum seekers, foreign students and other long-term visitors, unauthorized

⁴ This survey was designed by Alina Mungiu-Pippidi for the IBEU Fifth Framework EU Research Project 'Functional Borders and Sustainable Security: Integrating the Balkans in the European Union' IBEU. Athens: ELIAMEP.

⁵ See Salt, John 2003. Current Trends in International Migration in Europe. Strasbourg: Council of Europe. CMDG 2003 (39).

foreigners, and naturalized foreign-born citizens of the European Union. The evidence from Germany, which has been a preferred destination for migrants, should alleviate fears of invasion, however (see Table 3). Poland and Romania are key source countries, but migrants from all accession countries (Central Europe and Eastern Balkans together) make up less than 10 per cent of the total number of migrants to the EU. Surveys in new member countries have always shown that only a tiny minority is interested in leaving permanently, though more would seek short-term work in the EU.

Table 3. Citizens of selected accession countries in Germany 2002 and 2003

Country of origin	2002	2003
Bulgaria	42 420	44 300
Poland	317 603	326 882
Romania	88 679	89 104
Slovakia	18 327	19 567
Slovenia	20 550	21 795
Sum CEEC	614 344	629 100
Sum 15 EU countries	1 859 811	1 847 777
Sum of all nationalities	7 335 593	9 578 288
Share of CEEC of foreign population %	8.4	8.4

Source: German Federal Office for Migration and Refugee, data of the Central Registry of Alien.

The UNDP survey in South-Eastern Europe shows some variety in migration intentions across countries (see Table 4). The share of Romanians and Bulgarians, who enjoy freedom of travel (although not freedom of labour), and whose countries signed EU accession treaties in April 2005, and who plan to seek work in Western countries, are just 12 and 7 per cent respectively. The figure for those who would settle permanently abroad is far smaller, just 3 per cent in Romania and roughly 4 per cent in Bulgaria. Only a third of respondents possess the needed social and hard capital to move abroad. By contrast, inhabitants of Kosovo and Macedonia are more prone to leaving their homes: 30 per cent of Kosovars and 19 per cent of Macedonians would move in search of economic opportunity. But since the population of the Former Yugoslavia Republic of Macedonia is some 2.2 million and Kosovo is 1.9 million, even these percentages would produce a relatively small number of additional migrants.

The gap between aims and means persists when respondents are asked if they have any experience as a migrant. Cross-tabulations of the data show that of all respondents who would consider emigrating, only half have had some experience abroad. Many of those considering leaving to find better jobs have some relatives

already abroad, leading us to the first important conclusion: a good predictor of the intention to leave is the existence of a family member or a friend abroad, simply because a would-be migrant could rely on him or her for temporary shelter and help finding a job. Regression models from the Romanian sample with various controls (such as economic and employment status) confirm this hypothesis. Germany is a leading destination for would-be migrants in the Western Balkans. Besides Germany, Southeast Europeans prefer neighbouring EU countries, such as Italy and Greece. Bulgarians also prefer the United States, and Romanians Ireland, due to its high demand for labour.

Table 4: Migration intentions and experience

Survey item	Kosovo	Romania	Macedonia	Bulgaria
Intention to leave temporarily ["Do you plan to leave country temporarily to seek work abroad?"] Intention to leave permanently	30	12	11	7
[Do you plan to emigrate and to live there?]	Na	3	2	4
Personal migration experience ["Have you worked abroad in the last 10 years?"]	Na	6	9	Na
Family migration experience/ past ["Has any member of your household worked abroad for a while?"]	Na	14	17	Na
Family migration experience/ present ["Is anybody from your household currently working abroad?"]	27	10	10	Na
Favoured countries of destination	Germany, Swiss, USA	Italy, Spain, Ireland	Greece, Germany	Greece, Germany, USA

Source: UNDP Early Warning Survey Kosovo 2004 by Riinvest, Macedonia 2005 by BSS Gallup. Public Opinion Barometer Romania Survey by Gallup International May 2005; Bulgarian International Organization of Migration IOM Survey 2003. Bulgarian data comes from Rossitza Guentcheva, Petya Kabakchieva, Plamen Kolarski (2003). Bulgaria. The social impact of seasonal migration. Sofia: International Organization for Migration Bulgaria.

Migrating to foreign countries is not part of most people's way of life. Humans tend to remain in their home environments, which they know and master best. Under normal circumstances, only small numbers of people travel to foreign countries seeking a new home. This is particularly true in rural societies. Our survey shows that 88 per cent of Romanians have never travelled to a neighbouring country, and 92 per cent have never been to another foreign country. Fifty-eight per cent have not made it as far as Bucharest, the national capital, and 41 per cent, the majority of which are mostly peasants, have not travelled to the capital of their county. Bulgarians are only slightly better travelled than Romanians, with 78 per cent who have not travelled to a neighbouring country, and 84 per cent who have never been to a non-neighbouring foreign country. However, 88 per cent have

managed to see Sofia, the capital. In smaller Macedonia and Kosovo, which were part of a multinational federation, only 6 per cent of Serbs have not been in a neighbouring country, compared with 41 per cent of Macedonians and 71 per cent of Montenegrins. Beyond the immediate borders, however, the liberal travel policy of Communist Yugoslavia did not generate significant differences from the Eastern Balkans: 81 per cent of Serbia's inhabitants have never been to a non-neighbouring country, compared with 63 per cent of Macedonians and 94 per cent of Montenegrins (see Table 5).

Table 5: Travel patterns in SEE

% of population that has never travelled to...	Regional capital	Country capital	Neighbor country	Other foreign country
Romania	41	58	88	92
Bulgaria	12	18	78	84
Serbia	12	22	6	81
Montenegro	4	8	71	94
Macedonia	7	36	41	63

Source: IBEU survey 2003.

Moreover, as some have argued, economic migrants are increasingly likely to commute rather than settle permanently.⁶ The term 'migration' has become increasingly inadequate to describe many of the migrant workers in the EU, although it is difficult to pin down precisely how many people commute. Romanian and Bulgarian short-term labour migrants are limited by the three-month terms of their Schengen visas, after which they may not return to the EU for the next three months, unless they have a work permit in the respective EU country. Those migrants with some form of permit tend to return for at least three months and spend most of their earnings in their home country. They also tend to pass their temporary job, for instance, in construction, to a relative who then takes the position for the next three months. Albanians show greater propensity to settle more and pay social security in their host country, but they also seem to commute considerably and spend most of their money at home.⁷ Countries like Italy, which record stays longer than eight days and thus create a legal niche for short-term

⁶ See Florentina Constantin (2004). *Migrating or Commuting? The Case of Romanian Workers in Italy: Niches for Labour Commuting to the EU*. Budapest, OSI: EUMAP also Sebastian Lazaroiu, *The circulatory migration of the Romanian work force. Consequences on European integration*, Bucharest, 2002. Available in Romanian at: <http://www.osf.ro/ro/initiative.pdf>.

⁷ See Antigone Lyberaki & Thanos Maroukis (2004). *Albanian Immigrants in Athens: Some recent findings*. Hellenic Foundation for European & Foreign Policy. WP 5 WORKING PAPER No. 5.2/2004.

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work, provide useful statistics illuminating this phenomenon. Longer-term visitors come mostly to work, or to join a family in order to find a job.

Table 6: The motives behind long-term sojourns in Italy, by nationality

Motivations as stated in permesso di soggiorno 2002	Albanians (in %)	Romanians (in %)
Work	53.8	58.3
Family reasons	38.8	31.4
Study	4.1	1
Religious reasons	0.1	0.9
Other reasons	3.3	8.4

Source: Immigrazione. Dossier Statistico 2003. XIII Rapporto sull'immigrazione — Caritas/ Migrantes.

The survey data points to two conclusions. First, in the case of the former Yugoslavia, the tide has turned (see Table 1). During and immediately following the war many Yugoslav citizens left the country. But now some of these people are now returning. Second, the data show that the potential number of migrants from Southeastern Europe is relatively small, seeing how small the population is. Those who can find a job and shelter are more likely to move, but they are relatively few. Romanians are most likely to migrate, but they already have the freedom to do so.

Can we estimate the number of temporary migrants from the Western Balkans who would travel to the EU if they were free to do so? If the Schengen visas were lifted for Macedonia, 88,000 might consider temporary work abroad (11 per cent of 800,000, representing the work-age population). If we take into consideration people's connections abroad and starting capital, the figure drops to less than 44,000. For Kosovo, which has 1 million inhabitants, only 30 per cent of the working-age population would consider migrating, which is a small figures compared with the migration potential of countries like Poland or Romania. Thirty per cent of the Kosovar labour force is insignificant for Europe, but the remittances they could send home would provide a significant boost for Kosovo's economy.

Migration theory divides the causes for migration into pull factors (conditions in destination countries) and push factors (conditions in migrants' home countries). Among the pull factors, demography weighs heavily. The European Union is not just wealthy and enjoys the best social protection systems in the world, but it is ageing and has considerable demand for low-skilled or unskilled labour, partly legal and partly illegal. Given these opportunities, networks of family and friends will emerge to facilitate the flow of labour from home to destination country.

On the push side, some factors are political, others economic. Civil war or danger of civil war, as well as continuous struggles for control over the state among fractious ethnic groups are one of the main causes of migration, as are fears on the part of the weaker group, often justified, that it will be the target of retaliatory and

discriminative policies. There is always some movement of the poor towards rich countries, but the massive population movements often signify the tacit desertion of what people perceive as hopeless societies and the inability of their governments to address problems. It is a vicious cycle: failed states create hopeless societies, which tolerate state failure in their turn. This is not the case in Southeast Europe. Economic growth in the Eastern Balkans, Albania and Serbia are currently high, and foreign direct investment is slowly catching up with the levels in Central Europe.

The trend is positive, but the region is still far from catching up to Central Europe. Except for Croatia, Southeast Europeans earn less than half of what Central Europeans do. Not only depressed Macedonia and Albania have low per capita GDP, but also Romania and Bulgaria, whose macroeconomic situation is on the whole good. Overall, except for Albania, real incomes have not yet matched those of 1989, when the transition started, in any of these countries. By comparison, Central Europe was originally richer and has well surpassed 1989 income levels. Unemployment has reached peaks in Macedonia and Kosovo, and lows in Romania (which, having the largest number of peasants, has extensive hidden unemployment). Overall, young people (under 35 years of age) have considerable difficulties finding their first job.

Regression analysis of our survey data shows that an unemployed person is more likely (though not much more likely) to seek to emigrate than an employed person. The difference is small because often officially unemployed people have undeclared income that they earn in the informal sector. More than a third of workers acknowledge in our survey that they work without a contract (see table 8).

Table 7. Economic performance in SEE countries

	GDP per head (US\$) 2003	Real GDP (1989=100)	2004 GDP growth (% estimate)	Unemployment %	Average monthly gross wage (US\$) 2003
Albania	1 980	125.7	6.8	15	150
Bosnia and Herzegovina	1 690	67.5	5	16	330
Croatia	6 500	90.6	3.7	14	842
Macedonia, FYR	2 300	81.6	1.0	32	213
Serbia and Montenegro	2 450	52	6.0	14	213
UN Administrated Kosovo			5.0 (source EWS 9)	50	182 (source Ministry of trade and industry)
Romania	2 550	92.6	7	6	202
Bulgaria	2 560	87	5	14.3	167
Central Europe average	6 710	122.9	2.6	-	-

Source: Kekić 2004 International Labour Organization.

Table 8: Worked without contract in the past ten years

Country	Worked without contract	Still working with no contract
Romania	23	34
Bulgaria	27	25
Serbia	31	38
Montenegro	16	26
Macedonia	18	37

Source: IBEU survey 2003.

The same regression analysis shows that people who are more likely to emigrate are males between 18 and 45, residing equally in rural and urban areas. More educated people are not more likely to emigrate as we would expect given the brain drain theory: graduates of high schools and vocational schools are in fact more likely to seek work abroad than are university graduates, because their relative gain is higher, and so is the demand for the low skilled jobs that they do. In Romania, contractors estimate that more construction workers work abroad than within the country. According to their estimates, in 2002 alone over 300,000 construction workers laboured abroad as opposed to approximately 270,000 in the country. Romanian construction workers who work legally in EU countries can earn 1,500-2,000 euros per month, while those who work illegally make about 1,000 euros. By comparison, in the domestic construction market workers earn less than 200 euros per month.⁸

Minorities, particularly the Roma, are also likely to migrate. Evidence is scarce from surveys, due to Roma's tendency not to identify themselves as Roma. The West European media, especially in countries like Austria and Italy, report frequently on East European 'Gypsy' beggars. There is, however insufficient evidence, that this group — which is often the target of discrimination — is most likely to emigrate. Other minorities are certainly more likely to leave, for instance Hungarians in Romania, Turks in Bulgaria and Albanians in Macedonia, according to regression analysis of our UNDP surveys. To sum up, individuals are more likely to consider temporary or permanent migration if they are underemployed, are males of an active age and belong to a minority group.

Who benefits?

How does migration affect the origin and destination countries? On the one hand, both the theoretical labour economics literature and the available empirical evidence clearly point to the many positive benefits immigration has for the host economy, even though the magnitude of the gain depends on the type of immigrant

⁸ Constantin, D. L. and all. (2004). The migration phenomenon from the perspective of Romania's accession to the European Union Bucharest: European Institute of Romania. 5/2004.

labour, as well as the specific features of the host economy. On the other hand, the problem with migration is that, although it raises aggregate incomes, it does tend to reduce, other things being equal, the wages of some of the receiving country's workers. One can take for granted that migration raises the incomes of the migrants — otherwise they would not choose to migrate. Migration also raises the return to capital, hence profits, in the receiving country. But the increase in the receiving country's labour pool might reduce the wages of incumbent workers in certain industries. But the net result is an increase in the receiving country's aggregate income and an expansion in its tax base. From this overall gain, governments could compensate the domestic labourers who see their incomes fall and still leave everybody better off.⁹

Harvard's Dani Rodrik, in addition to many other economists, has argued that even a modest freeing up of labour would create gains for the world economy greater than those of liberalizing trade. Moving 100 million migrants from poor to rich countries, other things being equal, would raise global GDP by 8 per cent.¹⁰ In a recent study by the Institute for the Study of Labour (IZA) in Bonn, the authors conclude that under realistic assumptions about the convergence of GDP and wage levels, migration to the West of 1 per cent of the population in the new member states would increase the aggregate GDP in the sending and receiving countries by 0.2 to 0.3 per cent respectively.¹¹ In other words, both sides win.

People have different views on the effects of emigration for sending countries. Critics argue that the brain drain and slower labour growth could hurt the origin countries' economies. If migrants pay tax, they do so in the country where they work, not in the sending country. But none of these arguments holds in Southeastern Europe. Most migrants don't have jobs in their home countries and thus don't make any contribution to GDP, or just a small one. Second, as we have shown before, in the Balkans educated people do not emigrate in significantly greater numbers than do other people. The bulk of temporary migrants are low-skilled workers, and the jobs they take in destination countries might otherwise not be filled by local workers.

Local economies, therefore, cannot lose from migration. But do they win? To answer this question, we must first understand what awaits migrants in the European Union. Generally, migrants from Southeastern Europe, both long-term and temporary workers, are able to find work. This is not surprising, because they leave with some job prospects or they are networked to people who can help them get a job. But the work they find is seldom quality work. Migrants from Southeastern Europe work more on a day-to-day basis, engaging in the jobs Westerners do not do. Women work as housewives, men work in construction or

⁹ Migration and development. May 6th 2004 From Economist.com.

¹⁰ Rodrik, D. (2002), "Final Remarks", in: Faini, R., J. DeMelo, K.F. Zimmermann (eds.), *Migration. The Controversies and the Evidence*, Cambridge: Cambridge University Press, pp. 314-317.

¹¹ Boeri, Tito and Herbert Brücker (2005). *Migration, Co-ordination Failures and EU Enlargement* Discussion Paper No. 1600. Bonn: Institute for the Study of Labor. May 2005.

drive taxis. After the Poles, migrants from Southeastern Europe have come to do most of the agriculture seasonal work in countries like Spain or Germany. A study of Albanian migrants in Greece found that 96 per cent of Albanian men had jobs; women also displayed a considerably higher employment participation rate compared with Greek women (65 per cent versus 40 per cent, respectively). While 88 per cent of men paid social security contributions on a regular basis, the respective percentage of women was found to be much lower (22 per cent), especially due to their employment in traditionally informal jobs, such as house cleaning. The main occupations for men are wage employment in construction (41 per cent), in manufacturing and tertiary sectors (31 per cent) and a surprisingly high percentage of self-employment (business ownership) that usually falls outside the reach of immigrants (25 per cent).¹² Almost without exception, they send money home or save money to spend later in their home countries. Most of this spending (about 60 per cent) goes to help impoverished families back home survive. But some is used for home improvements (40 per cent), including improvement of sewage and energy systems.

The value of remittances is considerable for home economies. In 2003, for instance, remittances ranged from 700 million euros in Albania and Croatia, respectively to 1.5 billion euros in Bulgaria and 2 billion euros in Romania. In some years, remittances exceeded the level of direct foreign investment. In Albania nearly half of the population benefits, although unequally, as it is traditional to support people outside the nuclear family. (Albanian UNDP Early Warning Report Survey, 2004). In Romania and Bulgaria, only migrants' close family members receive remittances (about 10 per cent of the population). For at least half of families receiving remittances, this aid is important for survival. In only about 10 per cent of cases, however, is this aid higher than 1,000 euros per month, according to our data. The average, if we divide the remittances by the total population, is less than 100 euros per head. In Macedonia about a tenth of the population receives money from abroad, in Kosovo about 15 per cent, according to our survey.

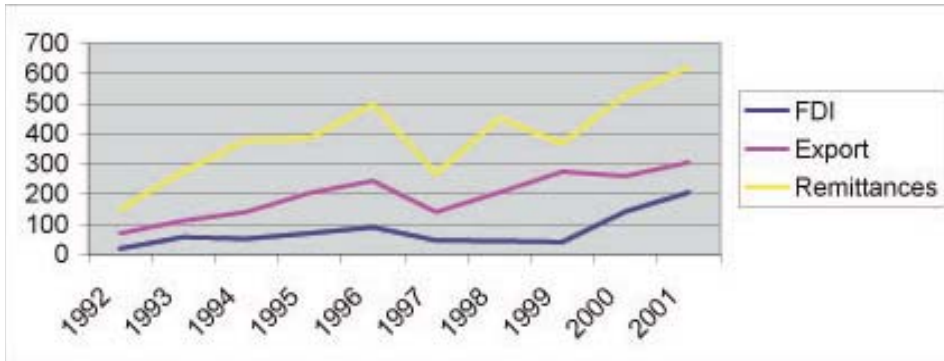
The case of Albania is illustrative (see Figure 1). In Albania, remittances are the main source of foreign currency income. Between 1991–2002, they amounted to 10 to 22 per cent of GDP.¹³ They surpass direct foreign investment and foreign aid. Apparently they surpass export revenues as well, and have helped to counterbalance the growing trade balance deficit.¹⁴ Remittances are the key to poverty alleviation in Albania, turning poor households into relatively prosperous

¹² Lyberaki, A. & Thanos Maroukis (2003). Albanian Immigrants in Athens: Some recent findings Athens: Hellenic Foundation for European & Foreign Policy. WP 5.2, Unpublished paper.

¹³ Bank of Albania, 2003, quoted in the UNDP sponsored report by Gedeshi, Ilir, Hekuran Mara and Xhilda Preni (2003) 'The encouragement of social-economic development in relation to the growth of the role of the remittances' Tirana: Centre for Economic and Social Studies (CESS).

¹⁴ See Germenji, E and all (2000). Estimating Remittance Functions for Rural-Based Albanian Emigrants. Tiranë : Centre for Economic and Social Studies (CESS).

Figure 1: Dynamics of remittances, exports and FDI 1992-2001 in Albania



Source: Bank of Albania, Annual Report 2003· Bank of Albania, 2003, quoted in the UNDP sponsored report by Gedeshi, Ilir, Hekuran Mara and Xhilda Preni (2003) ‘The encouragement of social-economic development in relation to the growth of the role of the remittances’ Tirana: Centre for Economic and Social Studies (CESS).

ones.¹⁵ In rural areas, remittances are the second largest component of income, lifting families above the poverty line.¹⁶

Critics stress that most remittance income is usually spent on consumption. However, increased consumption is critical to poverty reduction for households living close to the poverty line. Evidence from Albania, Romania and Bulgaria shows that remittances prevent a large number of people from falling below the poverty threshold, contribute modestly to local development (through household improvements) and boost consumption spending, which contributes to the high rates of growth in these three countries.¹⁷ Remittances cannot by themselves, however, replace other development strategies and especially the optimal combination of FDI, trade liberalization, aid, return migration and improved governance.

Migrants from Southeastern Europe do return to invest, although they do not have much for this purpose. The evidence from our Romanian study shows that businesspeople are more likely to have worked abroad than people in other

¹⁵ De Soto, H and all. (2002) Poverty in Albania. A Qualitative Assessment, The World Bank Washington D.C.

¹⁶ Lyberaki, A. & Thanos Maroukis (2003). Albanian Immigrants in Athens: Some recent findings Athens: Hellenic Foundation for European & Foreign Policy. WP 5.2, Unpublished paper.

¹⁷ See World Bank (2003): ‘Workers’ Remittances’, Ch. 7 in Global Development Finance, World Bank, also Gammeltoft, P. (2002): ‘Remittances and other financial flows to developing countries’, International Migration, 40/5; World Bank (ibid); anonymous (2002): Policy Paper for the Greek EU Presidency: Western Balkans, an agenda for stability, development and integration, Athens: December 2002, mimeo; King, R, N. Mai and M. Dalipaj, Exploding the Migration Myths: Analysis and Recommendation for the European Union, the UK and Albania, Sussex Center for Migration Research, University of Sussex, 2003.

professions. They save money while abroad and bring it home to invest in their home countries. Qualitative research in Romania and Albania has shown that a small part of remittances is used for investment in the small and medium enterprise sector. In other words, remittances are crucial for growth and poverty reduction, but they cannot by themselves contribute to development of infrastructure that regional economies need badly. Those have to come through assistance or foreign direct investment.

Migration: A virtuous circle?

After the fall of the Berlin Wall in 1989, emigration barriers in the East have been replaced by immigration barriers in the West. Free labour mobility from the new member states has been postponed for up to seven years, and new member states must tighten external borders as mandated by the Schengen Agreement (1985). The obligation to implement the new policy was partly transferred from European border guards to domestic border guards. To travel, an individual has to present proof of accommodation, medical insurance, return tickets and quite a considerable sum of money per diem. Drivers need also to present the car's special 'green card' insurance.

Can Europe trust national border authorities to screen potential migrants? The data from Romania and Bulgaria — where Schengen visa requirements for short stays (under three months) were lifted soon after the start of accession negotiations — show that the system works, and that it has improved over time. 16 per cent of Romanians were denied exit in 2003, of which two-thirds for failing to present the per diem money (in cash). In the first semester of 2005 this figure has grown to 468,905 individuals. This means the proportion of people denied exit has increased considerably as border guards come to grips with the EU requirements. About 10,000 individuals were repatriated from the Schengen space in the same interval, 0.4 per cent of those who exited the country. Pure illegal behaviour (such as using false passports) was under 0.1 per cent. Romanian authorities took steps against the individuals repatriated by Schengen countries (such as drawing up of criminal files) and confiscated their passports for periods varying between six months and five years. However, their numbers do not exceed 0.3 per cent of the number of those who went out of the country.¹⁸ IOM reports that in 2001, when visa restrictions for short-term travel by Bulgarians in the Schengen zone were lifted, the number of border crossings exceeded those in 2000 by only 9 per cent. Data from the national censuses conducted in 1992 and 2001 show that between these two censuses approximately 196,000 people emigrated from Bulgaria, while the number of persons who have returned or settled in Bulgaria was of 19,000.

In 2002, 300 individuals tried to illegally cross the Romanian border; in 2003 the number fell to 28. Illegal crossings of Bulgarian citizens totalled 560 in 2002,

¹⁸ Figures provided by IOM Bulgaria (Guentcheva, R., P. Kabakchieva and P. Kolarski. Bulgaria The social impact of seasonal migration Sofia: International Organization of Migration, September 2003) and Romanian European Institute (see note 7).

down from 2,785 in 2000. Thus lifting visa restrictions for short-term entry in the Schengen space resulted in a considerable decrease in the number of border regime violations by Romanians and Bulgarians.

These figures show that, with European assistance, border guards in Western Balkan countries can be trained to apply the Schengen requirements. Of course there will also be some corrupt crossings, but experience from the Eastern Balkans shows that illegal behaviour actually drops massively once visas are given up. And the number of potential of migrants from, say, Serbia, Macedonia and Bosnia is close to that of Bulgaria, no more. Despite this, the Stability Pact focuses so far almost exclusively on border controls, dealing with the Balkans as transit countries for trafficking and smuggling of migrants into the EU, even though most reports show a sharp decline in illegal border crossings. The rigid border controls imposed by the EU in fact tend to accentuate and encourage permanent migration to the detriment of seasonal migration, which is more beneficial for both sides.

Why don't European governments liberalize the visa regime *vis-à-vis* the Western Balkans, which could help these small economies more than aid flows? Rather than taking this step, EU governments have installed 'transitional arrangements' with newcomers, which only diminish the economic potential of freedom of labour, and which carry substantial economic costs.¹⁹ Paradoxically, labour demand is growing in Europe. Even with slow economic growth, most European countries find themselves short of skilled and unskilled workers who are prepared to do jobs that national workers shun. Birth rates are also falling in most countries of the EU-15.

As the EU expands eastward, it needs to open itself to migrant labour, just as it did for Italy, Portugal, and Spain in the 1950s and 1960s.²⁰ Southeastern Europe, which has already received the EU's promise of integration, is the place to start. The Schengen visa regime must stop impeding regional economic development. Our data shows that the European Union would do well to replicate its successful policies towards the Eastern Balkans in the Western Balkans, thus building the foundation for real poverty reduction in the region. This is even more necessary seeing the setbacks that the European Constitution suffered in 2005. Despite the goodwill of the European Commission there is a real risk that the accession perspectives for Western Balkans have become even more distant, and so the development gap between these countries and Eastern Balkans grows further. Allowing short term migrants and seasonal workers becomes *the* main facilitating instrument that the EU can offer in this interval of uncertainty to prompt development, not stagnation of the Western Balkans.

¹⁹ Boeri, Tito and Herbert Brücker. Migration, Co-ordination Failures and EU Enlargement Discussion Paper No. 1600. Bonn: Institute for the Study of Labor. May 2005.

²⁰ Stalker, P. 'Migration Trends and Migration Policy in Europe; in International Migration London: Blackwell 40: 5, 2/2002.

Recommendations

At the EU-Western Balkans Summit in Thessaloniki in June 2003 the European perspective of the Western Balkans was reinforced. The future integration into European structures and ultimate membership into the Union was declared a high priority for the EU. 'The Balkans will be an integral part of a unified Europe' the summit statement read.²¹ The EU also committed itself to a more liberal visa regime for the Western Balkan countries at the Thessaloniki summit in 2003. There was no substantial follow up to this promise, although negotiations were initiated on visa facilitation with Russia, Ukraine and China, which do not have

similar EU perspectives.²² Western Balkan countries citizens, despite their countries having signed SAP treaties with EU as a preliminary accession step are still treated as any third-country nationals, who need a Schengen visa or a residence permit in a EU country to travel in the European Union. The possibility of a special travel authorisation, which would enable third-country nationals to stay up to six months per year in the territory of the Member States on condition that the stay in one Member State does not exceed three months, enabled by the Commission's proposal (*COM(2001) 388 final*) was applied to Eastern Balkans only.²³ However, the December 2005 European Council summit acknowledged the progress of applicant countries of the region, from Croatia to Macedonia. Both the instruments and the explicit goal to open Europe more to these countries exist. Concrete steps are needed, however, to pass to the implementation phase. We therefore recommend:

To the Balkan Stability Pact:

As the Pact hands increasingly its tasks to regionally owned agencies or to countries, this one issue that still concerns the region as a whole remains unsolved. The pact should advocate at the level of European Commission and the EU member states for the liberalization of the Schengen visa regime for Western Balkan countries. Only when this is accomplished one can truly acknowledge that the objectives for which the pact was created were finally reached.

To the European Commission:

1. Design road maps with each and every country so to set clear targets for border capacity improvement and to provide a clear timeframe for the end of the visa regime and the passage to a regime similar to Romania and Bulgaria.
2. Step us the assistance to increase border capacity on the model of Romania and Bulgaria so that the screening of EU entrants is entrusted to Western Balkan

²¹ <http://www.eu2003.gr/en/articles/2003/6/20/3121/>

²² International Crisis Group Report, November 2005, EU Visas and the Western Balkans, <http://www.crisisgroup.org/home/index.cfm?l=1&id=3809&m=1>

²³ <http://europa.eu.int/eur-lex/pri/en/oj/dat/2001/ce270/ce27020010925en02440250.pdf>

countries, not Schengen border guards. Encourage and assist governments to adopt and popularize legislation that allows such screening, so that a legal basis is created and citizens are informed of requirements needed to travel to the Schengen space.

3. Open negotiations already on this issue during the Austrian presidency of the European Union in 2006. The discussion should concern Albania, Bosnia-Herzegovina, Macedonia and Serbia-Montenegro, with the understanding that each country will be treated according to its merits. A country should be recommended for a lift of Schengen visas once it meets the criteria set in the roadmap, which should not be more restrictive than those met by Bulgaria and Romania when this policy was applied to them.

To EU Member States:

Begin negotiations with Albania, Bosnia-Herzegovina, Macedonia and Serbia-Montenegro on a the basis of the Commission's recommendation.

To the Governments of Albania, Bosnia-Herzegovina,
Macedonia, Serbia-Montenegro:

Adopt and implement legislation following the path set by Bulgaria in 2001 and Romania in 2002 to obtain the lift of Schengen visas, including readmission agreements with individual EU member states taking responsibility for all third-country nationals who arrive in the EU from their territory. Ask for the assistance of these two neighboring countries to design and implement realistic and effective road maps with the goal of preventing cross-border crime, money laundering and traffic, while allowing freedom of travel of law abiding citizens who satisfy the requirements agreed with the European Union states.

ECONOMIC DEVELOPMENT, MIGRATION AND ILLEGAL MIGRATION WITHIN THE CONTEXT OF THE LIBERALIZATION OF THE VISA REGIME

by
*Jasna Bacovska*¹

In the post-Communist period, a number of political and military conflicts occurred on the European continent. Consequently, the European Union faced millions of migrants, of which 5 million were refugees from the former Yugoslavia. After a political reconciliation, countries in Southeastern Europe have been faced with dismal economies and social crises. Many have sought redemption in the European Union as refugees and economic migrants.

Immigration has therefore become a critical question in the EU's political agenda resulting in a restrictive migration and visa policy.

Social crises in the Western Balkans propel the increase of migration toward Europe. Thus, it is necessary to analyze the macro-economic indicators within the Western Balkans. Positive economic results and a clear political will for membership in the EU should be proven through fast and efficient reforms. These two aspects are needed to liberalize the visa regime.

The Republic of Macedonia is included in the newly created political category of the 'Western Balkans'. The question to consider is this: whether economic development is the sole reason migrants leave their countries of origin. The following issues must be examined.

- a) The social composition of migrants: ethnic group, educational attainment, gender, age, and so forth.
- b) Illegal factors that influence migration: corruption, organized crime, human trafficking, and negligent border control.

¹ Center for Strategic Studies, MASA, Skopje.

Globalization has meant that migration is a forefront issue on the European policy agenda. Within the last decade, social and political developments as well as military conflicts have meant that the European Union confronted millions of migrants, 5 million from the Yugoslav region.² The sudden influx of immigrants produced negative reactions within the EU. In 1991 and 1992, we witnessed hundreds of brutal attacks on foreigners. These events had an impact on European policy and resulted in the restrictive visa policy employed today. To counter the obstructive visa policy, illegal migration and organized crime flourished.

The International Organization for Migration (the IOM) has estimated that 400,000 illegal migrants cross into the EU every year. Culprit countries are Albania, Turkey, Iraq, and countries of the former Yugoslavia. The most opportune entry point is Italy, and as such Italy was forced to tighten its border control after adopting the Schengen system.

The newly designated 'Western Balkans' has been marked as an underdeveloped area with the livelihoods of 24 million people at stake — or 6.5% of the population of the EU.

Upon the announcement of Romanian and Bulgarian ascension into the EU in 2007, international institutions and organizations replaced the term 'Southeastern Europe' with 'Western Balkans' which includes Albania, Bosnia and Herzegovina, Croatia, Macedonia, and Serbia and Montenegro. Frequently Kosovo is mentioned separately from Serbia and Montenegro contrary to UN Resolution 1244, which designates Kosovo as part of that union.

GDP in the Western Balkans approximates 50 billion euro or 2300 euro per capita, with significant disparity within the region. For example, GDP per capita is 5400 euro in Croatia and 2700 euro in the Republic of Macedonia. Due to political, economic, and security problems, the Western Balkans continuously lags behind Central Europe. In order to clearly illustrate the economic situation, it is important to stress several indicators.

Economists expect positive trends to continue in line with favorable foreign political and market reforms.

A single digit inflation rate has been sustained in Albania, Bosnia and Herzegovina, Macedonia, and Croatia due to a "policy based on external anchors". Meaning that the domestic currency is bound to convertible foreign currency simultaneously respecting the macroeconomic agenda of the World Bank and International Monetary Fund. Moreover, in 2003 the budget deficit was 4% of the GDP. Foreign trade in the Western Balkans is not reflexively affected by fluctuations in the global economy. In the past few years, there was nominal growth in exports and imports, however imports outpaced exports which has negatively affected the trade balance. There exists a 7.9 billion euro trade deficit with the EU.³

² Anthony Giddens, *Sociology*, Polity Press, Cambridge, 2001.

³ E.Economy, E. Commission, *Occasional Papers*, 01. 2004, str. 1. Bank of Austria, Creditanstalt, *South-Eastern Europe — On the right track*, May 2005, str. 13, 15, 18, 21, 25.

Private transactions, which are particularly important for Albania, Macedonia, and Kosovo, arrive from workers abroad.

Services in all countries are sufficient, however only Croatia outpaces the rest of the region due to their burgeoning tourism industry.

Foreign donations account for 2.7% of the GDP with vast disparities. From 2 to 3.8%, to 40% of the GDP as is the case in Kosovo.⁴

Foreign direct investment is critical. The overall amount of FDI between 1997 and 2004 was 16.4 billion euro, or 2 billion per year. The largest beneficiary of FDI is Croatia with 54%, then Serbia and Montenegro with 22%, followed by Albania, Bosnia and Herzegovina, and Macedonia. Calculated per capita, Croatia receives 2045 euro, Macedonia 500 euro, Serbia and Montenegro 455 euro, and Albania 348 euro.

Restoring peace and security as well as prospective integration has benefited the region. Progress has been made in certain countries, particularly in the privatization of small and medium enterprises, as well as in trade liberalization, due to a trade initiative sponsored by the Stability Pact, which assembled a wide network of free trade contracts. Progress has been made in the banking sector as well.

There remains a need for more reform. Respect for the rule of law, anti-corruption measures, legislative transparency, creating efficient infrastructure, and chiefly fostering commercial initiatives. Finalizing the privatization process, building an efficient capital market, reforming the public sector, and establishing a central treasury (like ones already in place in Albania, Croatia, and Macedonia), are also necessary to attract foreign direct investment and/or indirect investment. Donator support in the form of grants or loans will likewise play a significant role in financing investment, reform, and balance of payments in the Western Balkans.

Western Balkan countries retain significant debts.⁵ Nominally, in 2001 the most heavily indebted was Serbia and Montenegro with 12 billion US dollars.

By export related debt — 414%, and GDP — 114%, Serbia and Montenegro remains heavily indebted. This is understandable after considering the years of sanctions, wars, and similar domestic quagmires.

Albania's debt as a percentage of GDP is 27%, and Macedonia's is 42%. With rapid increments of overall debt, up to 2 billion US dollars, the impression of Macedonia is changed.

In 2001, Croatia with a debt of 4.7 billion US dollars has achieved the largest currency reserves.

⁴ E.Economy, E. Commission, Occasional Papers, 01. 2004, str. 1 i 2, i E. Economy, E. Commission, 01. 2004, str. 2. Bank of Austria, Creditanstalt, South-Eastern Europe — On the right track, May 2005, str. 13, 15, 18, 21, 25.

⁵ Denzo David, E. Commission i Milica Uvalic, Dept. of Economics, University of Perugia: Exchange Rates in the W. Balkans and Their Evaluation towards EMU, Preliminary Draft, 30. 01. 2004, p. 28.

The Republic of Macedonia is on the lower lever of medium-developed countries.⁶ In 2000, the poverty line was 150 euro per 4 member family. 80,000 families received social aid. In the past 4 years, recipients of social aid increased by 28.8%. 70% of the employed received salaries below 150 euro. 50% of the population is below the poverty line.

Foreign migratory trends continue upward in the last half-century. The strongest instances of migration of our population were tracked in the 50s and 60s, particularly the 200,000 strong migration of ethnic Turks back to their native republic. Tens of thousands of ethnic Macedonians are permanently immigrating to trans-continental countries such as Canada, the United States and New Zealand. This trend continues and has manifested itself as an economic migration which is more intensively directed to Western Europe. The migratory wave of ethnic Macedonians contains pockets of ethnic Albanians and Roma. According to the Council of Europe, the largest populations of Macedonians are found in Germany, Switzerland, and Italy.⁷ In the 1996-2003 period, the number increased by 42,000 in Germany and Switzerland, about 6000 per year. In 2003, 120,000 citizens of Macedonia were currently residing in those countries.

Table 1: Number of citizens of the Republic of Macedonia living in diferent European countries, 1996-2004

Country	1996	1997	1998	1999	2000	2001	2002	2003	2004
Germany	33.984	38.774	42.550	46.167	49.420	56.000	58.300	61.000	61.000
Italy		11.596	13.456	16.647	21.110	26.051			
Nederland		449	482	507	500	590	646	677	677
Slovenia		2.200	2.412	2.277	3.565	4.125	3.897		
Sweden		1.303	1.594	1.676	1.819	1.925	1.715	1.420	1.420
Switzerland		45.234	48.604	51.142	54.300	56.317	59.456	61.211	61.455

Source: Council of Europe, Recent Demographic Developments in Europe 2003, 2004.

Table 2. Number of Macedonian Immigrants in the overseas countries

Country	Number of imigrants
Australia 2001	81.898
Canada 1996	30.915
USA 2000	43.783

Source: www.emigration.gov.mk

⁶ “National strategy for economic development of the republic of Macedonia, development and modernization” Skopje 1997, page 26.

⁷ According to information of Italian Ministry of Interior, closing with 30.april.2001 in this country there were 23106 citizens from Macedonia.

Macedonian immigration has also included a contingent of young people with higher educational attainment. Statistics for our citizens show that the overall number is more than 150,000 in the following three countries. The actual figure is estimated to be much larger.

During the instability of the past 15 years a trend of illegal immigration from the Republic of Albania, the Protectorate of Kosovo, Bosnia and Herzegovina, and south Serbia to the Republic of Macedonia has emerged. This impacts the ethnic structure of Macedonia.

Those migratory trends out of Macedonia are creating problems in population growth, and must be further studied.

What is required to liberalize the visa regime is a successful campaign against the crimes of human trafficking and smuggling.

The Republic of Macedonia is not the country of origin for most victims of trafficking, but it has been identified as a convenient country for transit and possibly as a final destination. Because it borders Greece an EU country, Macedonia is an attractive endpoint. In its effort to combat trafficking, The Republic of Macedonia has accepted all relevant legislation from the UN, EU, Council of Europe, and the Stability Pact.⁸

Thus, the fight against illegal migration should be generally directed. A public relations campaign must be launched to raise awareness, particularly among youth. Campaigns against corruption must be waged as well. Corruption remains not only rule of law issue but a sociological problem moreover, and is difficult to oust, especially in smaller countries.

Intensive regional co-operation is necessary, ranging from academic debates to police co-operation. Measures that must be taken are:

- Anti-corruption training for relevant officials.
- Clearly defined roles for prosecutors and attorneys in corruption cases.
- Clearly defined boundaries for judges in corruption cases.
- Legitimate and efficient border management which meet EU standards.

These measures should be implemented in the short term, but the long-term goal should be economic stability. Economic stability will improve the standard of living in the Balkans.

Positive economic results and clear political will towards membership in the European Union should be attained through fast and efficient reforms. These are necessary requirements to liberalize the visa regime.

⁸ Practicum, On The Combat Against Trafficking in human beings and Illegal migration, 2005.

ILLEGAL MIGRATION AND THE FIGHT AGAINST HUMAN TRAFFICKING

by

Brankica Grupković¹

The subject of migration, especially illegal or irregular migration, is a very broad and dynamic one. In the world, this topic draws a lot of attention, not only from governments, but their citizens as well.

On a global level all 190 independent countries of the world are either the countries of origin, transit or destination of migrants, and very often, the countries are in all three positions.

The UN's official estimate on the number of migrants in the year 2000 was 175 million, and it was estimated that this number will rise to 185 to 192 million in 2005.

However, what worries governments and citizens are the illegal migrants.

Before the terrorist attacks on September 11, 2001, the arguments on the risks following illegal migration basically revolved around economic and social issues as well as worries about budgetary expenditures. Nevertheless, since 2001, connections between terrorism, human trafficking, the smuggling of migrants and other forms of transnational organized crime have become primary on the security agenda. Nowadays, state bodies are faced with the two seemingly opposite tasks. They have to provide uninterrupted flow of *bona fide* travelers, regular migration, movement of business people and tourists, and on the other hand there is a need for the prevention and fight against illegal migrations, which use very sophisticated methods of abuse. There is a need to prevent illegal migration both because of its connection with terrorism, and to prevent the spread of contagious diseases. On the other hand, organizations dealing with this problem have serious troubles due to lack of financial resources needed for investing in the most modern information systems, lack of personnel, but also the problems in respect and application of the appropriate standards of domestic and international law. Another problem is lack of

¹ Representative of the ICMPD to SCG.

cooperation, not only on the international level, but also between agencies within one country.

According to the EUROPOL report on organized crime, published in October last year, illegal migrations are not decreasing. On the contrary, even stronger consolidation of groups involved in organized crime is present. These groups now control the entire process from the country of origin to the country of destination. Now, when measures for preventing illegal migration and border control are being strengthened, the only possible option left for illegal migrants to reach their destination is through the channels of organized crime. At the same time, it is stated that the profits made in illegal migration is far less than in narcotics, but the risk is also considerably lower. The report says that during their journey, which is in several stages, the illegal migrant goes from one cell to another, through a chain of territorially bounded criminal networks which cooperate with great efficiency. The question of human trafficking, which is much crueler, is also connected with this. The latest trend is the participation of women perpetrators who gain the trust of potential victims much more easily. Criminal groups show no scruple in exploiting children, from selling them for illegal adoption to being forced to beg, coerced into labor and prostitution. In addition, it is stated, criminal groups have increased the level of professionalism, logistics and efficiency.

The European Union strives to build a comprehensive approach to migrations, particularly in cooperation with the countries of origin of illegal migrants, which entail the issues of political nature, human rights and development. In the countries of origin and transit, this approach requires fighting against poverty, improving the living conditions and job opportunities, conflict prevention and consolidation of democratic states, and the respect of human rights, especially the rights of minorities, women and children.

A general recommendation is that the countries of origin and transit of illegal migrants, in the framework of general and joint management of migration flow, with the utmost urgency, do the following:

Sign, ratify and implement the UN Convention against transnational organized crime with added protocols, as well as other relevant international instruments, in particular the Geneva Convention with the New York Protocol.

Reinforce the measures of border control in order to prevent illegal entries, transits and stays in the EU countries, followed by measures of police control within their own territories, with an aim to discover and destroy the networks of smugglers and human traffickers, and according to appropriate international instruments, including the ones concerning human rights.

Adopt suitable changes in criminal legislature (punishment for crimes of human trafficking, smuggling migrants, forging documents, accountability of drivers, etc.)

Promote or enable campaigns for raising awareness on problems and risks connected with illegal migrations.

EU member states are developing a common immigration policy whose aim is better control of migrations through coordinated activities, having in mind the economic and demographic situation in the EU. This is done through the establishing of a common legal framework in terms of conditions for entering and stay of the citizens from the third countries on its territory. Prevention and fight against illegal migrations are an inseparable part of the comprehensive common asylum and immigration policy.

Priorities in areas of administering law and internal affairs are: border control, visas, correct and comprehensive treatment of migrations, asylum, and fighting against drug smuggling, money laundering, fight against organized crime, terrorism, fraud and corruption with the cooperation of the authorities and police.

In its five-year Plan of Activities (2005-2010) in areas of freedom, justice and security, based on The Hague Program, the European Commission has identified activities of the EU in ten key areas: basic human rights and citizenship, the fight against terrorism, managing migrations, internal and external borders and visas, asylum, integration, exchange of information, fight against organized crime, administering of justice, and individual responsibilities and solidarity of the member states.

In the fight against organized crime a special emphasis is always put on the importance of the fight against illegal migrations, human trafficking and the smuggling of migrants. The countries of the Western Balkans are singled out as important and this is confirmed in the conclusions of relevant international conferences. The conference held in London in November 2002 was entirely dedicated to the fight against organized crime in the countries of the Western Balkans. It is estimated that this area is the “gate through which channels of illegal migration, illegal drug smuggling, human trafficking (especially women and children) go, making millions for the criminal groups in countries of Western Europe.”

For the countries of the Western Balkans, it is important that it has been pointed out that the organized crime and corruption are obstacles for setting up democratic stability, strong and responsible institutions, the rule of law principle and economic development. Special attention should be directed towards the fight against all forms of illegal trafficking; trafficking humans, drugs and weapons. In terms of cooperation in areas of migrations, border management, it is stated that it is the key to establish strong and efficient border management, which contributes to the fight against organized crime and illegal migrations, as well as increasing the degree of internal security of which the citizens of those states are entitled to. This was reiterated in the speech given by the European Commissioner for issues of justice, freedom and security who said that the issue of liberalization of the visa regime was closely connected to issues of enforcing necessary reforms in areas of administration of justice, internal affairs in each individual country of the Western Balkans, according to the criteria set by Council's Regulation, where the first criterion is the issue of illegal migrations.

On the other hand, it seems as though we do not give appropriate attention to this topic. Only individual topics attract public attention, and even then it is not continuous. For example, only sporadically, the public is informed about the return of the Roma population, and the problems they are facing. Even though we are faced with a very complicated migration scenario, we still do not have real answers to these problems/challenges, starting from the policy of entering the territory of Serbia and Montenegro. That it is so we can see in the area of visa regime where we can notice different regimes for entering the territory of Serbia and territory of Montenegro.

A separate matter, maybe the most important one, presents the issue of illegal migration in our own territory, through it of it and from it, in other words, Serbia and Montenegro as a country of destination, transit and origin.

The subject of the fight against trafficking humans, especially women and children, and smuggling people is current. The problem of human trafficking is specific because it has more dimensions; it is a political-security problem connected to the existence and activities of organized criminal groups which use the profits from this criminal activity to finance other. It is present in politically instable societies, but not only in them, with undeveloped or insufficiently developed institutions and with a marked corruption of state officials. However, another important dimension is a violation of human rights of the victims.

The general legal framework for the subject of migrations is the Law on Movement and Stay of Foreigners from 1980, and the Law on Crossing the State Border from 1979. So, even though we are dealing with a very dynamic issue, which needs constant adjustment, solutions present in our relevant laws are completely outdated.

When it comes to measures in fight against illegal migrations, the human right standards must be respected, before all the European Convention on Human Rights, Geneva Convention on Refugees. In the field of fight against human trafficking, only multidisciplinary approach is effective which covers both repressive measures and prevention. In cases tried in front of the Special Court for Organized Crime in Belgrade I will mention two cases. In December last year a group of ten members from the Pancevo criminal group was convicted for a total of 20 years in prison for crimes of human trafficking, while in January the charges were brought against eight of our citizens, three Chinese and one citizen of Bosnia and Herzegovina for suspicion that they had committed a crime of human trafficking. The media report states that they are charged for the smuggling and trafficking of Chinese citizens for \$10,000 per person. According to the NGO data in 2005, Shelter for Victims of Human Trafficking has taken care of 54 victims, while NGO Atina provided shelter for 7 victims of human trafficking. The Service for Coordination of Assistance for the Victims of Human Trafficking has assisted 52 victims. The NGO ASTRA has received 1,712 calls on their SOS line and assisted 82 victims, out which 59 have been identified this year. Also, in 2005, 13 criminal charges were brought against 21 persons for crimes of human trafficking according to Article 111b of Criminal Law of Republic of Serbia.

Nevertheless, it appears that the prevention component is missing – investigating causes, understanding the phenomena, information campaigns together with non-governmental organizations, as well as the analysis of new trends – which is the key element in the fight against human trafficking.

Also, the legal framework for the fight against illegal migrations is inadequate.

Penal law introduced adequate sanctions for criminal acts, but the punishment of legal persons, freezing and seizure of assets earned by these criminal acts by the smugglers and human traffickers. Also, a general principle for prevention of committing acts of crime, their detection and punishment is also important.

It is necessary to further improve visa policy in order to enable free movement of *bona fide* travelers, but also to prevent illegal migrations, as well as to harmonize visa policy on the whole territory. This should be followed by secure travel documents, visas, and exchange of data in visa issuing practices, trends in forging documents, data collection, and analysis.

In short, my opinion is that the answer should be found for a number of interconnected areas, especially because of the complicated migration scenario, it is necessary to have comprehensive, multidisciplinary approach to the issue of migration in Serbia and Montenegro. In front lies the construction of a completely new system of border security, and control on border crossings, where the movement of people, goods and services must be uninterrupted; borders must be open for the movement of *bona fide* travelers and commerce. Also, it is necessary to make easier the regular cross-border movement which would stimulate the economic development of the region itself. It is necessary to finish the demarcation and demilitarization, continue with professionalization and permanent education, together with technical advancement, which requires the training of relevant state bodies in usage of integrated border management; that there is cooperation and synchronized action of offices within one agency-ministry. This cooperation should be both vertical and horizontal in order to secure international, cross-border, bilateral and multilateral cooperation. On several occasions it was stated that the capacity and readiness of each individual country in the Western Balkans to fully integrate in the mechanism of regional cooperation are the key indicators of the readiness and ability of that country to adjust to the European obligations, accept them, and join the EU.

An important element of cooperation in fight against illegal migrations is the signing and implementation of the Agreement on Readmission.

THE REGIONAL ASYLUM SYSTEM

by

Vladimir Petronijević¹

On the road towards European accession, Serbia and Montenegro will have to harmonise and build its migration policy with the respect of the European standards. This is a rather comprehensive job, requesting a strategic support and full coordination of all the competent bodies. At the moment when negotiations of the *Stabilisation and Association Agreement* finalisation with EU have started, the problem of migration management remains open, without suitable solutions.

The general impression is that there is no sufficient level of awareness among decision-makers in SaM about challenges which defining of the migration strategy in accordance with the regional initiatives and European standards brings with itself. The asylum system, once it has finally and legally been established, will be a completely new and unknown “organism” in the SaM legal system. The state union can neither praise itself with a successful implementation of the Readmission Agreement, namely the care it shows for returnees from Western Europe. The position of internally displaced persons is very difficult and the process of integration and return from the region of Croatia and BiH is slow and underway with many difficulties.

EU also monitors the reform policy which the candidate countries are implementing in this field. One of the three working groups for negotiations with EU, formed on the State Union level, will negotiate about the issues of visa, asylum, border control and migration management. The *Stabilisation and Association Agreement* per se will also contain provisions regarding this issue. The Agreements signed by Croatia and Macedonia are also characterised by this. Articles dealing with the migration policy of SaM can also be found in the documents, above all, of the economic and trade character. This is a powerful message of EU, which will expect full cooperation and true reforms from us in this field.

¹ Group 484, Belgrade.

EU has also expressed its opinion through the *Feasibility Study*, section 3.6.2 covering the issues of asylum, visa, and migrations. „The constitutional dispute on the distribution of competences is influencing the timely adoption of legislations in this area. This is the reason of SaM lagging behind the countries in the Region (...) The framework law on the State Union level was adopted by the Parliament, two republic laws including the procedures, are in the advanced stage with a considerable assistance of UNHCR(...)”² Special attention is paid to the *readmission* issue, where positive developments have been noted in this area. 13 agreements have been signed and implemented with 15 countries. Nevertheless, it has been noted that the process of further conclusion of readmission agreements is slowed down as compared to the period before March 2003. A single agreement has not been signed since then. The slow activity of the state in this field has been emphasised by the French foreign minister as a possible reason of harshening the visa regime of France towards SaM. The positive mark given in the Feasibility Study can be replaced with the negative EU position, if the process of conclusion of the Readmission agreement is not continued in a more dynamic manner.

In 2006, the year of strenuous negotiations with EU, the republic laws on asylum will probably be adopted. Our expert public is facing a task to assist that solutions in the future regulations be in accordance with UN and EU standards.

This document is also an expression of the civil society attempt to assist SaM in defining its refugee law in the context of the European integrations.

Asylum is a protection which a country gives to a foreigner to whom it has recognised the refugee status. The refugee status is recognised after the legally set proceedings where it has been determined that a foreigner has a justified fear that he/she will be persecuted because of his/her race, religion, nationality, belonging to a social group or because of his/her political opinion.

The asylum system in one country serves as a protection of the persecuted within the range of control measures namely the policy of migration management.

According to the provision of the Constitutional Charter, the State Union Assembly should pass suitable legal solutions as regards the policies of migration, asylum, visa regime and integrated state border management in accordance with EU standards. The right to asylum is also guaranteed by the SaM Constitutional Charter, by Article 38 Paragraph 2 of the Charter on human and minority rights where “*Any alien who reasonably fears that he/she might be persecuted because of his/her race, colour, sex, language, religion, ethnic affiliation, member-ship of a group or political conviction, shall have the right of asylum in Serbia and Montenegro*”. Article 50, paragraph 2 of the Constitution of the Republic of Serbia determines that “*The right to asylum shall be guaranteed to a foreign citizen and stateless person who is being persecuted for supporting democratic views and participating in movements for social and national emancipation, for human rights and freedoms, or for the freedom of scientific or artistic creativeness*”.

² <http://www.ssinf.sv.gov.yu/dokumenta/studija.pdf>

The solution adopted by the Constitutional charter, as it was noted in the National strategy for Serbia and Montenegro's accession to EU goes further in relation to the 1951 UN Convention on the Refugee Status, as it extends the possibility of protection of refugees in relation to the persecution because of his/her gender, colour, and language, which are not prescribed by the UN Convention as conditions for getting a refugee status. But the Constitutional Charter and the Constitution of Serbia set that the asylum system will be determined by a special legal regulation.

At this moment there is the Asylum Law at the state union level, passed on 21 March 2005, which is in its character the so-called framework law, adopting only basic principles, while the detailed regulation of this area is left to the Member Republics. Neither Serbia nor Montenegro has brought their Asylum laws. There is a draft law in Montenegro, and a working group has been formed in Serbia, which with the assistance of UNHCR experts should make the appropriated draft. Their adoption is a necessary prerequisite of a successful migration policy. Solutions that these laws will bring must clearly respect positions which UNHCR has established through decades of its work. They must rely on the 1951 UN Convention on refugee status, as well as standards and recommendations of the Council of Europe, and special attention should be paid to standards established on the EU level and in the region of South East Europe.

As it is the case with the law on visa regime, and upon passing of the republic laws on asylum, the issue of *political will* is disputable. Do state bodies of both member republics want this law to be passed? The issue of money necessary for the laws to be passed cannot be the reason for their not being passed. "The question we should all ask ourselves is: how much does it cost that we are not on the white Schengen list?"³ One precise calculation, which would encompass all the costs which the entire state has because of the visa regime with EU, would certainly prove the soundness of the set dilemma.

The Convention about the use of the Schengen agreement dedicates chapter sever of its second part to the processing of submitted requests for asylum. The basis of the system which today has a great number of critics among representatives of numerous humanitarian organisation in Europe has been determined. The intention of the makers of this convention was to set certain mechanisms which would determine the member state which has the jurisdiction to examine the submitted request for obtaining asylum protection.

"The most important instruments of the restrictive strategy for accessing the European asylum system came out of the Dublin Convention (which was signed in 1990, and came into effect in 1997) and the London Resolution of 1992."⁴ "According to the Dublin Convention, the authority for reviewing asylum requests

³ Nataša Dragojlović-Čirić, Ministry for international economic relations, Preparation meeting, Hotel "Palace", 23 September, 2005.

⁴ Timothy J. Hatton, Australian National University, University of Essex, CEPR and IZA — Jeffrey G. Williamson, Harvard University and NBER, *Refugees, Asylum Seekers and Policy in Europe*, July 2004, page 18.

belongs to the state through which the asylum-seeker entered the territory of the European Union. This concept was further developed at the meeting of ministers in London. The concepts of “Safe Third Countries”, “Safe Countries of Origin” and “Manifestly Unfounded Claim”, have been determined. The last one allows refugee status to be denied to an asylum-seeker through an expedited process where there is no right to appeal with a suspending effect. During 1993 and 1994, based on the recommendations of the Council of Ministers, the countries of the EU started to conclude bilateral readmission agreements with other countries. The aim of these agreements was to return citizens of third countries who, on their way to the EU, had transited through the signatory country of the readmission agreement.”⁵

“Countries bordering EU do not have much choice, but they themselves but accept standards determined by EU. The “Safe Third Country” principle comes out of the Dublin Convention and spreads across the EU borders and represents the foreign policy of the EU member countries. The concept of “Safe Third Country” is firmly established in Western Europe and occupies a key position in the proposals of the European Commission for the alignment of EU asylum policy procedures. It is based on the assumption that under certain conditions asylum-seekers who are found within their territory are the responsibility of a third country through which the asylum-seeker travelled. The concept of “Safe Third Country” centres around the practice of returning asylum-seekers to third countries (the transit states) without questioning whether their requests are well-founded, based on the opinion that the third country is allegedly a “Safe Third Country” and the person should have asked for protection there. The designation can be set unilaterally or can be a part of an agreement between two or more countries based on a readmission agreement”.⁶

Set as such, the European system of asylum simply requires the countries joining EU to build the strictly set standards into their internal legal solutions. Neighbours of SaM have had the established systems of asylum protection for a long time, which are more or less harmonised with the European standards: The Law on Aliens of the Republic of Croatia adopted on 18 June 2003, The Law on Movement and Stay of Aliens and Asylum of Bosnia and Herzegovina adopted on 18 July 2003; The Law on Asylum and Temporary Protection of the Republic of Macedonia adopted on 16 July 2003; The Law on Asylum of the Republic of Albania adopted on 14 December 1998, The Law on Asylum of the Republic of Bulgaria adopted on 16 May 2002.

At this moment SaM is the only country in the region which does not have a complete system of asylum protection legally defined, so the care of potential asylum seekers is carried out by UNHCR. This is another negative circumstance creating obstacles to further European integrations of SaM. The readmission

⁵ Group 484, Return from Western Europe, 2005, p. 53.

⁶ Ibid, p. 55.

agreements also have provisions defining SaM as a “safe third country”, but are not implemented, as SaM cannot be the safe third country to citizens of third countries and stateless persons due to the very undefined system of asylum protection.

Experiences of UNHCR show that SaM is not a country “splashed” by a wave of a great number of potential asylum seekers. The number of asylum seekers decreased by the disintegration of SFRY. There were 2,840 requests in 1986, 3,081 requests in 1987, and even 7,112 requests in 1989. This number was reduced with the beginning of war occurrences. 1,618 requests were filed in 1991, and the status was granted to 825 persons. Not a single requests out of 114 submitted in 1996 had a positive result. During 2004, 50 requests were filed, the status was granted to two asylum seekers. In the period January–August 2005, 40 requests were filed, and the refugee status has not been approved to anybody.⁷

Therefore, the number of possible asylum seekers, along with those who could arrive to SaM on the basis of the readmission agreement, would not be a large one. With a careful estimate upon the creation of the state budget, and with EU support, with the knowledge of home and UNHCR experts, SaM can be expected to build a system of asylum protection, by the international, and above all, European standards.

At this moment, SaM does not have a suitable infrastructure, above all, built asylum centres, or a sufficient number of trained people. “The present practice includes frequent deportations of asylum seekers (refoulement), without the right to the suspensive effect appeal and inadequate conditions of reception of persons, including the custody of asylum seekers during court proceedings and during processing of the request for asylum.”⁸

“We think that in the process of standardisation of legislations and practice of the West Balkans countries with EU standards, the conditions must be created for the following: making consensus on the criterion a country must fulfil to be pronounced as a “safe”, namely adopting a common list of countries that are considered safe, regardless of existing of a list of potentially safe countries, ensuring individual estimation of safety in each individual case, ensuring minimum acceptable economic and social rights of asylum seekers, ensuring the right to legal remedy against the decision saying that their claim should be directed to the third country, as well as minimum standards of protection in the procedure of deportation to the safe third country and quality process guarantees and transparency of the procedure itself.”⁹

Thus the region of South East Europe would harmonise its legal regulations, and as SaM is at the beginning of creation of its own system, a regional cooperation would assist in catching up with the missing from the previous period.

⁷ Asylum seekers and UNHCR Mandate refugees with BO Belgrade.

⁸ Group 484, Report on the condition of human rights of refugees, internally displaced persons, returnees and asylum seekers in Serbia and Montenegro for 2004, 2005.

⁹ Group 484, mr Tanja Pavlović-Križanić, unpublished text, Relevance and impact of EU developments in South Eastern and Central and Easter Europe, 2004.

EUROPEAN INTEGRATIONS AND READMISSION

by

*Danilo Rakić*¹

Introduction

With the abolition of internal borders and an affirmation of the principles promoting the free flow of people and goods within the EU (based on the Schengen Agreement of 1990, and the Maastricht Agreement of 1993) the need to strengthen external borders and develop additional security measures controlling the flow of people and goods into the EU, has arisen. During the eighties and particularly since the nineties, the EU countries, encountered with a mass influx of refugees and migrants² have been increasingly setting up various restrictive mechanisms for preventing their stay in the EU. In the twenty-first century as well, the fight against illegal migration and migration flows management are one of the priorities of the EU internal and foreign policy. The countries that wish to join the EU have clearly set the conditions which the candidate countries should fulfil through different phases in regards to the migration management and fight against illegal migration. The readmission agreements are one of the mechanisms of migration flows control used by the EU countries to return people to their countries of origin once they have no legal grounds for staying in the EU.

During the nineties, large numbers of citizens left of the former Yugoslavia seeking protection from war, persecution and discrimination.³ Among them, large numbers of Serbian and Montenegrin nationals received temporary protection in

¹ Group 484, Belgrade.

² Unfavourable economic circumstances and especially the increased unemployment rate in the EU have instigated xenophobia and racism of local population, articulated at the political level as a threat to the EU security and stability.

³ A million people from that region, almost five percent of the population have asked for permanent or temporary protection in the countries of Central and Western Europe. (Judith Kumin, U.S. Committee for Refugees, *Asylum in Europe: Sharing or Shifting the Burden?*, 1995)

Western Europe. Since the democratic changes of 2000, the return of SaM nationals from Western Europe based on the readmission agreements intensified.

Even after 2000, thousands of SaM nationals have continued to seek asylum protection in the countries of Western Europe. The UNHCR data for 2005 show that SaM (including Kosovo and Metohija) is the first on the list of European countries according to the origin of the asylum applications lodged in Europe. With 21,927 applications in 2005, SaM nationals were the most numerous in the world, well ahead the nationals of China and Russia.⁴

In 2005, Serbia and Montenegro initiated talks on the conclusion of Stabilisation and Association Agreement with the EU. In the agreement the EU has signed with Croatia and Macedonia, the areas related to visas, border control, asylum and migration are regulated by two and three articles respectively. Apart from some slight differences, the articles in both agreements are almost the same, and the special emphasis is placed on the area of migration and asylum. Within that framework, the most concrete part is related to the issue of illegal migration, the principle of reception obligation and signing the readmission agreements (with the European Union and bilateral agreements with the member countries). It is realistic to expect that the draft Stabilisation and Association Agreement between the EU and SaM will contain similar provisions. In case of SaM, the conclusion of the readmission agreements with all the EU countries and their effective implementation is of outmost importance.

The EU policy of migration management

As already noted in the Introduction, during the 1980's, the countries of the European Union and Western Europe were faced with a growing wave of refugees and forced migrants, recognised by politicians as a threat to the security and stability of the EU. During the period, there was a strong belief that the flow of migrants exceeded the capacities of the host countries to accommodate them and instigated xenophobic and racist reactions amongst local citizens. The state authorities responded by imposing protective legislative and administrative measures against the people who were trying to enter or extend their stay in the EU.⁵ The concept of "Fortress Europe", a popular term defining a resistance to the acceptance of foreigners to the EU, was expected to develop a way of strengthening the outside border for keeping forced migrants outside the European Union.

During the nineties, the European Union viewed the opening of borders in the countries of Central and Eastern Europe, the former Socialist Block, as a possible channel for mass migration. In response it offered these countries financial and technical support to control migration. In compliance with the EU's policy of preventing access to its territory, the development of mechanisms for efficient

⁴ UNHCR, *Asylum Levels and Trends in Industrialized Countries* 2005, March 2006.

⁵ Clotilde Marinho and Matti Heinonen, *Dublin after Schengen*, EIPA, *Allocating Responsibility for Examining Asylum Applications in Practice*, 1998, page 2.

protection of refugees had much lower priority than the development of restrictive border control measures. The restrictive border control measures were imposed in order to stop the mass exodus of immigrants who were forced to leave their countries because of armed conflicts in the territory of the former Yugoslavia.

One of the latest EU initiatives relating to international policies is the creation of the “circle of friends” or “neighbours” of the European Union. Included in this group are the countries of the former Soviet Union — Russia, the Ukraine, Belarus and Moldova, the countries of the former Yugoslavia — Croatia, Macedonia, Bosnia and Herzegovina, Serbia and Montenegro, and the countries of the Southern Mediterranean — Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, Syria and Tunisia which should receive and absorb new flows of migrants. The proposal of Great Britain was to relocate asylum-seekers to reception centres outside the EU borders in some of the “friendly countries”⁶ has not been accepted yet, but all the countries of the new “buffer zone” are under political and economic pressure to adopt EU standards for restrictive migration controls. The idea is to create a “friendly environment” in order to protect the EU from crime and terrorism.⁷

By insisting on the development of EU style asylum systems and imposing restrictive measures as part of their obligations for eventual EU accession (*aquis communautaire*), current EU member countries leave little choice to the countries of Central and Eastern Europe when it comes to the adoption of refugee legislation and policies on humanitarian issues and human rights.⁸ Some of these countries are under pressure to accept the return of their citizens whose request for asylum in EU countries has been rejected, or who have lost their temporary protection, despite the lack of basic living conditions for their reintegration in the now “safe and democratic” countries of origin.

In the last ten years, there has been a political consensus at the European Union level that the management of migration flows should be the result of a balance between the international obligations of the member states in respect of human rights and the need to maintain state security.⁹

⁶ At the EU Summit in Thessalonica in June 2003, the “new vision” on global management of problems of asylum-seekers, refugees and other migrants, proposed by Great Britain, was not discussed. The document of Great Britain Government on “New International Approaches for Procedure and Protection of Asylum-Seekers” is based on principle of strengthening the protection of refugees in the countries that are closer to their countries of origin. Therefore, the asylum-seekers who reached the EU territory should be transported to the centers located in EU bordering countries, where their requests for asylum would be considered. This proposal made by Great Britain was strongly criticised as an attempt to avoid the responsibility for refugees, based on the Convention and other international agreements

⁷ Statewatch, *EU buffer states and UNHCR processing centres and “safe heavens”*, June 2003.

⁸ Joanne van Selm, UNHCR, *Access to Procedures “Safe Third Countries”, “Safe Countries of Origin” and “Time Limits”*, 2001, page 12.

⁹ Tatjana Pavlović-Križanić, Group 484, *Relevance and Impact of EU Developments in South Eastern and Central and Eastern Europe*, 2004.

The most important instruments of the restrictive strategy for accessing the European asylum system came out of the Dublin Convention (which was signed in 1990, and came into effect in 1997) and the London Resolution of 1992.¹⁰ According to the Dublin Convention, the authority for reviewing asylum requests belongs to the state through which the asylum-seeker entered the territory of the European Union. This concept was further developed at the meeting of ministers in London. These conventions also saw the creation of the concepts of “*Safe Third Countries*”, “*Safe Countries of Origin*” and “*Manifestly Unfounded Claim*”. These concepts allow refugee status to be denied to an asylum-seeker through an expedited process where there is no right to appeal with a suspending effect. During 1993 and 1994, based on the recommendations of the Council of Ministers, the countries of the EU started to conclude bilateral readmission agreements with other countries. The aim of these agreements was to return those without the legal grounds for staying in the territory of the EU, but also the citizens of third countries who, on their way to the EU, had transited through the signatory country of the readmission agreement.

The efforts to develop a single system for asylum policy in the EU territory based on the principle of division of responsibilities were the result of the Treaty of Amsterdam of 1997, which became effective in 1999, and the EU Tampere Summit of 1999. Translated into the EU terminology, the Treaty of Amsterdam set the foundation for transferring the issue of asylum and migration from the “third pillar” of national legislation, through which states can make their own choice, to the “first pillar” where legislation is regulated at the EU level.

While the conclusions reached at the Tampere Summit, EU officials fully supported the obligations stemming from the Geneva Convention and other relevant instruments for the protection of human rights and development of a common system on asylum policies, at the EU Summit in Seville in 2002, the focus was shifted on prevention of illegal migrations.¹¹ ECRE (European Council on Refugees and Exile) feels that the legislation adopted by the EU over the last several years does not guarantee asylum-seekers and refugees efficient protection on the territory of the enlarged EU, stating that changes were made in a “deteriorated atmosphere and growing hostility of the public against asylum-seekers and refugees, and irresponsible media reporting”.¹² These restrictive measures, instead of dealing with the reasons for migrations, are meant to keep migrants and asylum-seekers outside the EU borders and thus directly influenced

¹⁰ Timothy J. Hatton, Australian National University, University of Essex, CEPR and IZA — Jeffrey G. Williamson, Harvard University and NBER, *Refugees, Asylum Seekers and Policy in Europe*, July 2004, page 18.

¹¹ Tatjana Pavlović-Križanić, Group 484, *Relevance and Impact of EU Developments in South Eastern and Central and Eastern Europe*, 2004.

¹² ECRE, *Broken Promises — Forgotten Principles*, An ECRE Evaluation of Development of Minimum Standards for Refugee Protection, 2004, page 3.

and will continue to influence the processes of EU integration in the countries of Central and East Europe, including Serbia and Montenegro.

The Treaty of Amsterdam imposed an obligation on the signatory countries to quickly develop legislation at the EU level that would play a crucial role in the future of millions of migrants, asylum seekers and refugees. In 2002, the European Commission was granted the exclusive right to propose the structure of documents for the harmonisation of asylum policies at the EU level. A part of the single European system for asylum policy is represented as follows:

- Establishment of criteria for determining the member state responsible for examining an asylum application (*Council Regulation Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Asylum Application Lodged in one of the Member States by a Third Country National — Dublin II. Directive N. 434/2003, of February 18, 2003*);
- Adoption of minimum standards on the acceptance of asylum-seekers (*Council Directive 2003/9/EC Laying Down Minimum Standards on the Reception of Applicants for Asylum in the Member States of January 27, 2003*);
- Agreement and adoption of resolutions on the minimum standards for being considered as a refugee (*Proposal Directive on Laying Down Minimum Standards for the Qualification and Status of the Third Country Nationals and Stateless Persons as a Refugees in Accordance with the 1951 Convention, or as Persons who Otherwise Need International Protection*);
- Adoption of minimum standards on granting and withdrawing refugee status (*Proposal Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status*);
- Adoption of minimum standards on granting temporary protection to people from third countries who do not meet the criteria set by the Geneva Convention, or who seek international protection for other reasons. (*Council Directive on the Minimum Standards for the Temporary Protection*);
- Adoption of standards on temporary protection of people from third countries in the event of a mass influx of refugees (*Council Directive on the Temporary Protection*);
- Promotion of a standard of balance between the member-states to support the countries which bear the load of influx of refugees and asylum-seekers (The European Refugee Fund — ERF, was founded in September 2000, with the budget of 216 million euros, for the five-year period, from 1999 to 2004).

In addition to these standards and resolutions, in February and June 2003, two directives were adopted, one on the reunification of asylum-seeking families and the other granting the right to residence (*Council Directive on Family Reunification, Council Directive on Long Term Resident Status*).

The entire set of EU documents which represent the first phase of alignment to the EU acquis is based on the controversial concept of the “Safe Third Country”. This has been reaffirmed at EU level through Directive 434/2003 (Dublin II), which in

most cases shifts the responsibility for reviewing requests for asylum outside the EU. The concept of “Safe Third Country” became the foundation for the harmonisation of the European asylum policies, despite the fact that such a policy bears a risk of strengthening the crises in the regions, violating human rights and returning people to the countries of origin where they may be exposed to persecution (*refoulement*).

The Dublin Convention is ambitiously envisaged as a contract which tackles the issue of readmission of citizens of third countries and the authority for examining the application for asylum. The Convention was signed in 1990, and became effective in 1997. In 2001, apart from the EU countries, it included Iceland and Norway. Briefly, the signatory party of the Dublin agreement which is responsible for the access of certain person on the territory of EU, is also responsible for examining of his/her application for asylum. UNHCR cherished the Dublin Convention as a strategy for adoption of agreed rules on responsibility for the decision on asylum application, emphasising that certainty in this respect reduces the possibility of “launching” the asylum-seekers to the refugee “orbit”. However, the Dublin Convention leaves the space to the “orbit” and chain return of refugees. UNHCR and other international organisations are concerned about the Article 3(5) of the Dublin Convention that allows to the EU states to return the asylum-seeker to a non-member country that is perceived as safe. It means that the EU country in which the request for asylum was filed can return the asylum-seeker to the safe third country, rather than to some other EU country that is bound by the Dublin Convention. The EU country can also, based on the Dublin Convention, return an asylum-seeker to another EU country which can again return him/her to the country outside the EU which, based on criterion of the last country of EU destination, is not the safe third country.¹³

Through the aforementioned documents, the Dublin Convention and London Resolution, the EU established the concept of “Safe Country of Origin” and “Safe Third Country”. The both concepts are fundamental for the readmission agreements SaM has so far concluded with the EU countries.

The concept of “Safe Third Country” centres on the practice of returning asylum-seekers to third countries, the transit states, without questioning whether their requests are well-founded, based on the opinion that the third country is allegedly a “Safe Third Country” and the person should have asked for protection there, before he/she stepped on the common EU territory.

The concept of “Safe Country of Origin” was developed in the belief that the asylum system was being abused as a back-door for illegal migrations.

History of the readmission agreement

For better understanding of the readmission issue, which is relevant in the process of alignment to Euro-Atlantic integrations, it would be useful to perceive

¹³ Stephen H. Legomsky, *Secondary Refugee Movements and the Return of Asylum Seekers to Third Countries*, International Journal of Refugee Law, 2003, page 15, taken from the text “Fortress Europe”.

this problem from the perspective of a “safe country of origin” and “safe third country” — Serbia and Montenegro.

In the mid-nineties, a number of countries of Western Europe intended to return (expel) to the former FR Yugoslavia several hundred thousand persons who had been deprived of asylum in the shortest time possible, majority of them being the Albanians from Kosovo and Metohija.

Having in mind a large number of asylum seekers, not only from FRY but those from other European countries (Romania, Bulgaria, Turkey), as well as from non-European countries (Afro-Asian countries), the attitude towards the asylum issue started to change in European countries, where it has become one of the most important internal policy issues in these countries. The problem of asylum seekers was at the same time linked with the changed status of foreigners, who continued to be less required as a cheap labour force in the EU, becoming a serious social problem/burden, and allegedly being a group of people connected with the organised crime (drugs and arms trade, illegal entrances of new economic migrants). Under the influence of these factors, European countries started to change their attitude to asylum seekers, imposing measures for their mass return/expel. For that purpose, they initiated the conclusion of agreements on return of these people to either the countries within the EU or other European countries the migrants originated from (Romania, Bulgaria, Poland), but also to transit countries (Czech Republic, Slovakia, Hungary).

In the mid-nineties and due to sanctions and isolation, FR Yugoslavia was not a partner to European countries in regards to the bilateral solving of the return problems of their nationals, those who had been rejected asylum. Instead, at the beginning of 1994, a massive return of Albanians from Kosovo and Metohija was planned, without the consent of FRY (the agreement was reached between FR Germany and Romania on cooperation in the deportation to FR Yugoslavia of around 40,000 persons who had been rejected asylum). However, it was an element of additional pressure for the Government of FRY, since in that period of sanctions and economic crisis there were over 700,000 refugees in the territory of FRY.

The Federal Government of FRY thereupon decided to simultaneously impose two measures:

- a) Imposing practical measures for the prevention of mass return of that particular category of persons in regards to:
 - Diplomatic and consular departments of FRY — restriction in issuing travel documents, refusing consular services to persons who had been in the asylum procedure;
 - Border crossings — rigorous control according to stricter criteria for entering the country;
 - Air traffic — declining flight permissions for the flights that are doubted to be used for mass return;

— Addressing the international bodies responsible for the protection of refugee rights — UNHCR, the International Red Cross, referring to relevant provisions of the Geneva Convention and the request to prevent mass expulsions with their activities.

- b) Expressing readiness of FRY to receive back its nationals in accordance with international law (upon the verification of identity and citizenship of every individual), but solely through bilateral negotiations with all the interested countries aiming at concluding agreements on organised and gradual return of the persons verified as Yugoslav citizens in the procedure before the Yugoslav organs.

That is how the process of gradual solving of one of the very complex problems was initiated, the problem that dominantly influenced bilateral relations of FRY with the countries of Western Europe. It should be emphasised that, in the situation of isolation and sanctions, the negotiations on concluding the agreements on the return of the rejected asylum seekers were an important part of the foreign policy activity of FRY, through which the former regime tried to present itself as an active and constructive factor in bilateral relations with the influential countries of Western Europe. Besides, these negotiations and agreements were instruments with which FRY tried to influence bilateral relations with these countries on the line of their own interests, even regarding the issues not necessarily related to this problem.

The strategy of the Federal Government of FRY was then comprised of the following:

- Ensure gradual and organised return, during the longest possible period;
- Ensure the exclusive right of relevant Yugoslav organs to establish the identity and citizenship of every rejected asylum seeker before the return;
- Provide transportation of the returnees by air exclusively;
- Include the provision of contribution (as much as possible) of the countries returning the rejected asylum seekers for creating conditions for their economic and social reintegration.

Based on the consent of the Federal Government and the established platform, negotiations with Switzerland and Sweden started during 1994 and with FR Germany at the beginning of 1995. The mentioned countries of Western Europe were forced to initiate negotiations, trying at the same time to simplify the problem of returning the rejected asylum seekers. Their main starting point was the formula that “every country is obliged to receive their citizens”.

In the changed international circumstances after the signing of the Dayton-Paris Agreement and the acknowledgement of FR Yugoslavia by the countries of Western Europe, the political, formal and legal conditions were met and the obstacles removed for Germany and Switzerland to conclude bilateral agreements with FRY. However, their justified estimations were that the Yugoslav side is trying to “buy time” and that it was not really interested in solving the asylum problem, which was the reason for the lack of progress after a number of negotiating rounds. Although the normalisation of the overall bilateral relations was directly linked with the

“improvement in solving the asylum issue”, along with the simultaneous pressure on the Yugoslav side and threats that, in case of further delay of negotiations, the countries of Western Europe would: withhold flight permissions of JAT to destinations in their territory, include an even stricter visa regime for Yugoslav nationals, postpone raising the level of diplomatic representation to the ambassador level, hinder the unfreezing of Yugoslav funds in foreign banks, etc., the Yugoslav delegation did not yield the firm mandate approved by the Government. For that reason, only after two years from the beginning of negotiations with Germany, Switzerland and Sweden, the first Readmission Agreement was signed (in 1996 with FR Germany and in July 1997 with Switzerland).

Concerning the dynamics of concluding agreements, which have been signed in a relatively short period with 16 countries (the last one with France, at the end of April 2006) it is obvious that now there is a clear difference in regards to the approach and readiness of SaM to fulfil its international obligations.

Readmission today

The first negotiations on readmission agreements were conducted by the Ministry of Foreign Affairs of FRY. After the State Union of SaM and the Council of Ministers had been formed in 2002, the Ministry of Human and Minority Rights became responsible for concluding the readmission agreements. According to the statistics of the Ministry of Human and Minority Rights, to date SaM has signed and implemented 14 readmission agreements with 16 countries: Germany, Switzerland, Sweden, Denmark, Italy, Belgium, Holland, Luxemburg, Austria, Slovakia, Hungary, Slovenia, Croatia, Bosnia and Herzegovina, Bulgaria and France. With the exception of the agreements signed with BiH Austria and France, all of the mentioned agreements have been ratified. The process of concluding 11 agreements has been initiated with, among others, the following countries: Great Britain, Norway, Portugal and Macedonia. All the agreements are bilateral with countries of Western Europe and the region, regulating the conditions and instruments of returning persons lacking the legal grounds for staying, and upon request of the signatory country. The persons encompassed with the readmission agreements can be the signatory countries nationals, the third country's nationals or stateless persons.

The EU has presented a positive assessment on the realisation of readmission agreements in the Feasibility Study, Section 3.6.2. dealing with the problems of asylum, visas and migration.

Nevertheless, the process of signing further readmission agreements has slowed down compared with the period before March 2003. No further agreements have been signed since March 2003 till April 2006 (when the agreement with France was signed). The positive assessment presented in the Study could easily be replaced with the negative position of the EU if the process of signing the readmission agreements does not continue in a more dynamic manner.

The Council of Europe estimates that between 50,000 and 100,000 persons will be returned from Western Europe to SaM (30,000 from Germany, 12,000 from the Netherlands, 3,000 from Belgium, 3,000 from Switzerland, 3,000 from Luxembourg). According to the German Government data, SaM nationals lodged 6,000 asylum applications during 2004, and in the same period only 4,000 persons were returned.

The conditions under which SaM nationals return to the country they have fled and where they try to start a new life are more than difficult. There are no protection measures for the reintegration of returnees, and readmission agreements hold no guarantees related to their accommodation. These people are not in official statistics, and specific research conducted by certain nongovernmental organisations reveals only fragments of the problem. Although the returnees mutually differ – in regards to their ethnic background, age and education — the thing they have in common is very often difficult economic and social situation they face after they have returned. The research shows that there is no difference between the persons who have forcibly returned and those who have returned “voluntarily”, since they have been forced to do that in order to avoid great inconvenience resulting from the forced return with the official escort.

State institutions facing the return of SaM nationals

The Ministry of Human and Minority Rights of SaM is a leading state institution responsible for negotiating and signing the readmission agreements, as well as for monitoring their implementation. The ministry of Foreign Affairs participates in negotiations, and the role of the Ministry of the Interior of the Republic of Serbia and the Republic of Montenegro is to identify SaM nationals. When a relevant organ of one of the signatory country requires reception of persons to the country of origin, such a request (petition) is forwarded to the Ministry of the Interior, which is obliged to establish whether the person in question is SaM national, and if that is the case, the petition is approved and the person can be deported. Returnees are then waited for at the airport where their identity and criminal record is checked once more and after that they have to make it on their own.

Nevertheless, some progress related to the response of the state institutions, above all the Ministry of Human and Minority Rights occurred in 2005. At the end of that year the Office for Readmission was opened at the airport followed by the creation of the *Draft Strategy for Integration of Returnees*, supported by the MARRI Initiative. The office at the airport provides important information to returnees upon their return to the country, comprising of a lawyer and a social worker who inform returnees on their rights, legal and social system and the way of their inclusion in the society. According to the Ministry of Human and Minority Rights data, since January 2006, 375 returnees arrived at the *Nikola Tesla* Airport, 150 of them in March only. Considerable influx is expected upon the end of the school year. Interestingly enough, only 30% of the returnees sought the assistance of the office at the airport, which can be explained by the inconvenient location of the office which is in the transit zone, and once they pass the passport control the

returnees cannot go back to the Office for Readmission. The overall majority of returnees are from Germany, 61% of them originating from Central Serbia, 21% from Kosovo and Metohija, 18% from Vojvodina. There are more male (71%) than female returnees (29%). As much as 26% of returnees are children, and according to the ethnic structure, the majority of returnees are Roma (59%), followed by Serbs (13%), Albanians (13%), and other nations and national minorities.

The adoption of the Draft Strategy for Integration of Returnees according to the readmission agreements, as well as the creation of the action and financial plan based on the Strategy should ensure more effective and efficient solving of the problems returnees are facing once they return to the country. The better the response of the state organs to the problems of returnees is, the greater are possibilities for efficient conclusion and realisation of the readmission agreements.

Conclusions and recommendations

On February 2006, during quite a dynamic and open discussion, the participants of the national round table (representatives of the Ministry of Labour, Employment and Social Policy, the Ministry of Human and Minority Rights of SaM, the European Commission Delegation to SaM, The EU Integration Office of SaM and the Republic of Serbia, UNHCR, representatives of international organisations, civil society organisations and the media) focused primarily on the institutional shortcomings of the readmission process, on state obligations in regards to readmission, problems during the reintegration of returnees and the process of concluding the readmission agreements.

The summarised conclusions emphasised that readmission is a process initiated more than ten years ago, but it is still not sufficiently known to the wider public. The return of SaM nationals who have no legal grounds for staying abroad is a democratic principle and the state obligation, as well as a prerequisite for European integrations and entering the White Schengen List. Therefore, the relevant state organs should do everything in their power to ensure the process to proceed undisturbed, at the same time taking care of the welfare of returnees. Therefore, the readmission agreements should encompass more guarantees related to their realisation. The relevant Ministries should be more actively included in the creation of the programmes for integration of returnees, and cooperation should be established between state institutions and the civil sector in regards to solving problems resulting from readmission agreements. International actors should also take part in the process.

READMISSION

by

*Zoran Martinović*¹

One of the foreign policy priorities of Serbia and Montenegro is to enter the so-called 'white Schengen list'. The imperative for the realisation of this main objective is preventing illegal migration, particularly from our country to other countries of the European Union, to the candidate countries, and other Western countries in general, as well as from other countries through the territory of Serbia and Montenegro to the afore mentioned countries. Therefore, it is necessary to sign readmission agreements with these countries, as well as to introduce a stricter visa regime with all the countries of Afro-Arab and Asian complex, aiming at hindering entrance to, and illegal transit, and migration through Serbia and Montenegro to the EU countries and other Western countries.

Since 1996, 15 bilateral readmission agreements have been signed with 17 countries, all of them being ratified, irrespective of France. Out of the mentioned signed and ratified agreements, 10 agreements have been signed with 12 EU member countries, with Germany, Sweden, Denmark, Italy, Belgium, the Netherlands, Luxembourg, Austria, Slovakia, Hungary, Slovenia and France. The remaining 5 agreements have been signed with 3 European countries in the process of the EU accession, with Bulgaria (the EU candidate country), Croatia and Bosnia and Herzegovina (Bosnia and Herzegovina has not yet ratified the agreement), as well as with Switzerland, which is not the EU country and with a non-European country (Canada).

The first readmission agreement was signed with FR Germany on October 12, 1996. However, in 2002 a new agreement was signed and ratified, encompassing all three categories of returnees.

According to the estimations of experts from the signatory countries, all the ratified agreements (except the one with Bosnia and Herzegovina, which has not

¹ Secretary, Ministry of Minority and Human Rights, Serbia and Montenegro.

yet come to power), have been successfully implemented and without any considerable problems.

Furthermore, the process of harmonising positions and signing readmission agreements with 11 countries has been initiated, 8 of them being the EU member countries (Greece, Great Britain, Czech Republic, Portugal, Latvia, Lithuania, Spain and Poland), one not being the EU member country (Norway), and 2 in the EU accession process (Romania — the candidate country and Macedonia).

Out of 11 mentioned countries, the conclusion of the agreement with Norway, Czech Republic and Great Britain is due soon, given that the agreement texts with these countries have been harmonised and signed, and the harmonisation of the agreement texts with Greece, Lithuania, Latvia and Romania is in its final phase.

With the mentioned agreements, both the ones already signed and those in the process of harmonisation, the conditions are being met for an organised, reciprocal and institutionalised return of the signatory countries' nationals, third country nationals and stateless persons, as well as transiting of the third country nationals and stateless persons. Having accepted such an approach, our country has planned a comprehensive approach to preventing illegal migrations within the signatory countries, as well as in the region, Europe and the world as a whole.

It should be mentioned that the provisions of the signed agreements encompass and incorporate all the highest EU standards in the field of protection of basic human rights and the rights of citizens, as well as regulations of other international conventions, aimed at the protection of human rights and liberties.

Since the beginning of 2003, the year when the State Union of Serbia and Montenegro had been formed and the signing and implementation of the readmission agreements was placed under the jurisdiction of the Ministry of Human and Minority Rights of Serbia and Montenegro and the republic Ministry of the Interior, around 1600 persons a year have been returned to Serbia and Montenegro. Those were the persons who returned accompanied by officials, while in the same period, including the so-called "escorted return", around 3.500 persons a year were returned to the country. All ethnic groups were equally represented, including Serbs, Montenegrins, Muslims, Bosniaks, Albanians and Roma, but lately the Roma are numerous (the problem of the Roma is the most recurrent and complex, having in mind their exceptionally difficult socio-economic situation).

Nevertheless, the process of return was somewhat more intensive in the period from 1996, the year the first readmission agreement was signed till the end of 2002.

In the entire period, the majority of persons have been returned from FR Germany, followed by Switzerland, Luxembourg and Sweden.

Although the number of potential returnees, the persons who are due to return to Serbia and Montenegro from the European countries in the upcoming period, is not known, it is estimated that their number is around 100,000.

Regarding the assistance of our country to returnees, the State Union has prepared the Roma Reintegration Programme in coordination with relevant republic Ministries and local self-government organs, since Roma make considerable number of returnees. The most frequent problems are a large number of Roma returning to the country without almost any property, accommodation, and employment problems, etc.

As an initial phase of the programme, and assistance to all those who return to our country according to the readmission agreements, the Ministry of Human and Minority Rights, being the relevant organ at the State Union level, has established the Office for Readmission. Its responsibility is to give instruction and legal advices to all returnees, regardless of their ethnic background, as well as to provide other assistance within the jurisdiction of the Ministry.

Besides the Roma Reintegration Programme, the Ministry of Human and Minority Rights also coordinates the work of a group for the preparation of action plans and provides new opportunities to the Roma in the fields of employment, housing, health, social care, education, media, information, culture and political representation.

Through the Ministry of Human and Minority Right, and in cooperation with the regional initiative MARRI, having a mandate in the field of migration and asylum, the State Union is preparing the Strategy for Reintegration of Returnees from Western Europe, who will return to the county according to readmission agreements. The Strategy will encompass the following fields: informing returnees on where and who they can turn to for help; obtaining personal documents; diploma validations; language classes for returnee children; accommodation; employment; social and health care.

When the Strategy is adopted, the state will allocate funds for its realisation in accordance with its financial capabilities.

However, concerning assistance provided to returnees by the countries they return from, the majority of signatory countries did not want to undertake the responsibility of participating in their financial-social reintegration. On the other hand, few countries have accepted the general obligation of participation in reintegration, and assistance is reduced to financing certain smaller projects, but not to direct concrete assistance to returnees themselves.

Having this in mind, any assistance offered by the states these people return from is more than welcome. Special attention is given to the fact that our country went through huge problems and difficulties during the nineties, producing a drastic decrease in economic activities and living standard for the entire population, and that it will not be able to provide necessary conditions for successful socio-economic reintegration of returnees.

Finally, it should be emphasised that with the upcoming EU accession of some countries in the region (Romania and Bulgaria are due to become rightful EU members on January 1, 2008), as well as the subsequent accession of other countries to the European association (Croatia and Macedonia, which have recently gained the status of candidate countries), Serbia and Montenegro, along with Bosnia and Herzegovina and Albania will become a border EU country in the region. Consequently, its obligations in regards to the prevention of illegal migrations, as well as to the conclusion and implementation of readmission agreements will become even more substantial and important.

EUROPEAN STANDARDS FOR THE FREEDOM OF MOVEMENT

by

Žaklina Novičić¹

The freedom of movement of persons is, with the freedom of movement of goods, services and capital, one of the biggest freedoms originally motivating European integration. The concept of the freedom of movement in European Union (EU) law has changed and expanded its meaning over time, from the original workers' right to freedom of movement, to personal and basic rights of EU citizens. Nowadays, the right of movement and stay of EU citizens in other member states is unconditional for three months, but regarding movement and a stay for longer than three months, the freedom of movement in the EU, is not an unconditional and unlimited right.

Together with the internal aspect, in EU law, under the idea of freedom of movement, regulations developed regarding crossing external borders, borders that EU states share with third countries (non EU states). Regulations regarding the issues of visas, asylum and immigration were also developed. This article will primarily deal with EU visa policy, especially the conditions and possibilities liberalizing EU visa policy towards third countries.

Internal aspects of the freedom of movement in the EU law

The content of freedom of movement in EU law grew from economic to political, according to the functionalist logic of European integration. The freedom of movement primarily meant the workers' right of movement and stay in other EU member states with the aim of doing business, and it evolved into a personal right of every EU citizen.² However, there are important differences in terms of duration of the right of the freedom of movement: movement and stay for up to three months

¹ Žaklina Novičić, researcher in the Institute for International Politics and Economy, Belgrade.

² This part of the paper represents a short and updated version of a previously published article: Žaklina Novičić, "Freedom of Movement of Persons in the EU Law", *International Issues*, Institute

is unconditioned, while the movement and stay of longer than three months are subject to certain conditions.

Freedom of movement of persons as a principle of the single market

The freedom of movement of persons, in the first phase of the development of European integration (1957 to 1980s), was exclusively an economic-legal principle which had the aim of bringing down obstacles against the movement of persons as a factor of the production process, and the creation of the common market for persons, goods, services and capital member states of the European Economic Community (EEC).

The Treaty establishing the European Economic Community, or the Treaty of Rome, from 1957 sets the establishment of the common market as one of the general goals of European integration. It does not define them, but prescribes that the “actions of the Community” are realized by “eliminating the obstacles against the free movement goods, persons, services and capital between member states”.³ A series of provisions in the Treaty of Rome, which mostly remained unchanged until today, prescribe the elimination of limitations for movement motivated by economic purposes, i.e. movement of certain economic categories of persons. Workers i.e. employed persons who perform work for certain compensation — for or under the supervision of another person (engaged in so-called non-self employed occupation, regardless whether it is a managerial or a physical work) are the only category of persons whose freedom of movement is explicitly regulated by the Treaty of Rome.⁴ Workers have been given the right to enter and stay in the receiving member state for employment and work and the right to stay in the receiving country after their work engagement in it has ceased.

The Council and Commission are, according to the authority given to them by the Treaty of Rome, by the derivative acts (secondary or derivative law), adopted in the late 60s and early 70s, concretized the meaning of the freedom of movement of workers. The most important document is Council Regulation number 1612/68 which puts into practice the contractual principle of banning any sort of discrimination (the principle of equal/national treatment) among the workers from member states according to their citizenship, and in terms of employment, rewards and other working conditions.⁵ At the same time, Council Directive 68/360 regulates the regime of entry

for International politics and Economy (“Sloboda kretanja ljudi u pravu EU”, *Medjunarodni problemi*, Institut za medjunarodnu politiku i privredu), VOL. LV, no.1, 2003, p. 57-88.

³ Treaty Establishing the European Economic Community, signed on March 25th, 1957, came into power on January 1st, 1958.

⁴ Treaty Establishing the EC does not define the notion of worker, and this definition of the category of worker comes from the secondary legislature and interpretation of the Court of Justice. See: Radovan Vukadinovic, *Pravo Evropske Unije*, Institut za Medjunarodnu politiku i privredu, Beograd, p. 133.

⁵ “Council Regulation (EEC) 1612/68 of 15 October 1968 on freedom of movement for workers within the Community”, *Official Journal of European Communities*, L 257, 19/10/1968, pp. 2-20.

and stay, and the conditions and procedures for entry of workers into the territory of the receiving member state, as well as the employment period. The Commission supplemented this Directive with Regulation number 1251/70, which regulates conditions and administrative formalities connected to the extension of workers' stay in the receiving member state after the period of employment ended.⁶

Based on the provisions of the Treaty of Rome, which have remained unchanged until today, the right of freedom of movement can be enjoyed by the "persons who perform activities by personal work, or are founding and managing enterprises, firms and commercial associations", or so-called self-employed persons, as well as persons who provide/use services, but their right to freedom of movement is derived from the freedom to establish one's own activity, or the so-called freedom/right of settlement and from the freedom to perform services within the Community. The jurisdiction in regard to bringing measures, with a goal of implementing the freedom of establishing one's own activity and the liberalization of services, the Council applied in the mid-70s, and brought two directives, 73/148 and 75/34, which specify the difference between two categories of persons: abolishment of the limitation of movement and stay is applied to the persons who provide/use services only throughout the period of the duration of that service.⁷

Together with the specification of the group who has the right to freedom of movement and abolishing the limitation of their movement, EU bodies prescribed the conditions under which the freedom of movement can be limited. First, it needs to be pointed out that the Treaty of Rome itself excludes persons employed in public administration from the principle of freedom of movement, and accordingly the principle of equal/national treatment. Also, a similar possibility of limiting the freedom of movement, i.e. discrimination of citizens of other states is anticipated for persons who establish their own activities and perform services even only if they are connected with "performing public duties".⁸ Apart from this restriction, the freedom of movement of employed, self-employed and persons who provide/use services can

⁶ "Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers", *Official Journal of European Communities*, L 257, 19/10/1968, pp. 2–12. "Regulation (EEC) 1251/70 of the Commission of 29 June 1970 on the right of workers to remain in the territory of a Member State after having been employed in that State", *Official Journal of European Communities*, L 142, 30/06/1970, p. 24.

⁷ "Council Directive 73/148/EEC of 21 May 1973 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services", *Official Journal of European Communities*, L 172, 28/06/1973, pp. 14–16; "Council Directive 75/34/EEC of 17 December 1974 concerning the right of nationals of a Member State to remain in the territory of another Member State after having pursued therein an activity in a self-employed capacity", *Official Journal of European Communities*, L 014, 20/01/1975, pp. 10–13.

⁸ This considers the movements with a view to performing activities in public management, i.e. activities which imply performing public government and providing general interest from the part of the state or the local authorities. All other activities in the public sector are treated equally. According to: "Report of the High Level Panel on the free movement of persons, chaired by Mrs Simone Veil", presented to the Commission on 18 March 1997, Internet, 01/07/2002, http://europa.eu.int/comm/internal_market/en/people/hlp/hlpn.pdf, p. 34.

be challenged by the reasons of “public policy, public security and public health”. The content and procedure for the restriction is because the above mentioned reasons are set by Council Directive number 64/221, 72/194 and 75/35.⁹

The abolishment, on the EU level, of the restriction of movement which are not for economic purposes began without formal introduction of the “Union’s citizenship”, and according to the introduction of more ambitious, political goals of integration in the mid-80s, after the adoption of the Single European Act. Renamed the ‘common market’ into the internal market and directly defined as an “area without internal borders which enables the free movement of persons, goods, services and capital”, states that view its gradual establishment in the Community will pass measures before December 31st, 1992.¹⁰ Following this decision the Council at the beginning of the 90s, expanded the right to freedom of movement to pensioners who did not use that right during their working age (Directive no. 90/365), students during their studies (Directive no. 93/96), and finally to all other categories of persons who do not enjoy this right according to the adopted provisions of the communitarian law (Directive no. 90/364).¹¹ However, even though the stay of these persons in the receiving country is allowed, it is materially conditioned: the persons in question must possess material means enough to prevent the overload of the social security system of the receiving country, as well as health insurance against all risks.

In sum, according to EU law, the right of stay longer than three months in the member state which is not their country of origin can be enjoyed by persons who: a) are employed in a lucrative activity as an employee or self-employed person, and so when traveling to a receiving member state in order to obtain a working engagement, or when they have ended their working engagement; b) possess enough financial

⁹ “Council Directive 64/221/EEC of 25 February 1964 on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health”, *Official Journal of European Communities*, L 56/04/1964, pp. 850–857. “Council Directive 72/194/EEC of 18 May 1972 extending the scope of Directive 4/221/EEC to workers exercising the right to remain in the territory of a Member State after having been employed in that State”, *Official Journal of European Communities*, L 121, 26/05/1972, p. 32. “Council Directive 75/35/EEC of 17 December 1974 extending the scope of Directive 64/221/EEC on the coordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health to include nationals of a Member State who exercise the right to remain in the territory of another Member State after having pursued therein an activity in a self-employed capacity”, *Official Journal of European Communities*, L 14, 20/01/1975, p. 14.

¹⁰ *Single European Act*, signed on December 3rd, 1985, and came into power on July 1st, 1987.

¹¹ “Council Directive 90/365/EEC of 28 June 1990 on the right of residence for employees and self-employed persons who have ceased their occupational activity”, *Official Journal of European Communities*, No L 180, 13/07/1990, pp. 28–29. “Council Directive 93/96/EEC of 29 October 1993 on the right of residence for students”, *Official Journal of European Communities*, L 180, 18/12/1993, pp. 59–60. Ruling of the Court of Justice on July 7th, 2002 canceled and replaced the previous Directive which referring to students — Council Directive no. 90/366 of 28 June, 1990 (ruling in the case C-295/90). “Council Directive 90/364/EEC of 28 June 1990 on the right of residence”, *Official Journal of European Communities*, L 180, 13. 07. 1990, pp. 26–27.

means, as well as health insurance which covers all the risks in the receiving country.¹² Based on a document which proves that they meet the prescribed conditions, a residence permit is issued as proof of the right to stay longer than three months. The residence permit is valid for five years after which it is renewed automatically, but after two years persons who are not engaged in a lucrative activity can be subject to the control and renewal of its validity. The right to a short stay (three months) is not subject to any special conditions or the possession of a residence permit, only a declaration of the residence address to the authorities of the receiving member state.

Practical interpretation and implementation of these rules have often been the case in the EU Court of Justice, which has emphasized that the residence permit only has a declarative character, it is not an authorization, but a document which notifies of the previously existing right, the right prescribed by the Treaty or, in certain cases, acts of secondary legislature, which is, therefore, acquired regardless of whether the authorities of the receiving country have issued the residence permit. The residence permit is, however, needed as proof that the person in question has the right to the freedom of movement and stay longer than three months.

The above described regulation is *summa summarum* of the communitarian law in the area of freedom of movement of persons until the introduction of the Union's citizenship.¹³

The right for the freedom of movement of EU citizens

The Treaty of Maastricht (1992) has put the idea of freedom of movement into a new legal and political context.¹⁴ This Treaty introduced into the Treaty establishing the EC provisions titled "Union Citizenship". "All the citizens of the Union": where a citizen of the Union is every person who has citizenship of a member state, has received "the right to move and stay freely on the territory of the member states". The freedom of movement of persons is, in this way, from a characteristic of the internal market evolved into an individual "right of every citizen of the Union to freedom of movement and stay within the territory of member states". However, the continuation of this provision is a paragraph which requires the "respect of restrictions and conditions set by this Treaty and measures for its implementation", which actually means, "return to the provisions which existed before the Treaty of Maastricht", i.e. that the users, contents and limitations of the freedom of movement were not essentially changed.

¹² The amount of the financial means is set (except in the case of students) as an amount higher than the lowest level of means which the receiving country gives as a social insurance to its citizens, taking into account the personal circumstances of the persons in question, and if the former is not applicable, sufficient means is the amount higher than a minimal social pension in the receiving member state.

¹³ The mentioned 11 instruments of the secondary legislature the Commission identifies as basic documents in the area of the freedom of movement. "Second report of the European Commission on Citizenship of the Union", Internet, 01/07/2002, http://www.europa.eu.int/comm/internal_market/en/update/report/citen.htm.

¹⁴ *Treaty on European Union*, signed on February 7th, 1992, came into force on November 1st, 1993.

This is confirmed by the European Commission's Second Report on the Union's Citizenship, which states that the provisions on the Union's citizenship do not form a comprehensive legal framework from which all of the rights attributed to the freedom of movement of the Union's citizen stem, that it cannot replace the existing legal basis which apply to specific categories of persons, for which the existing secondary legislature sets differences and restrictions, and that the mentioned provisions should be revised, which, basically, has not been done to this day.¹⁵

By using its right for legal initiative in the area of the freedom of movement, the Commission recommended in May 2001, the Council and the Parliament should adopt the directive which would codify the 11 existing instruments of the secondary legislature on the freedom of movement.¹⁶ In addition, the Commission recommended several new things. Concerning short stays of up to three months, the Commission recommends that the duration is extended to six months. Concerning the longer stay, the Commission recommends abolishing the permit for stay longer than six months too. In that case, only proof of residence is registered with the authorities, the certificate of registration would be enough.¹⁷ The requirement for employed and self-employed persons would still be current engagement in a lucrative activity, which would be proven by a simple statement given in good will — a *bona fide* declaration. For persons who are not employed the right of residence would for the first four years continue to be dependant on the possession of enough financial resources and health insurance, which would also be proven by a simple *bona fide* declaration. This request is facilitated by the Directive Recommendation on the Right of Freedom of Movement in as much as the amount of means is no longer set by the Directive and that countries cannot have it set.

The Directive Recommendation on the Right to Freedom of Movement introduces a new concept — the right of permanent stay after four years of continuous and legal residence in the receiving member state, after which persons in question are no longer subject to conditioning and restrictions which in fact makes them equal to citizens of the receiving country. The Commission, as a recommending body, thinks that four years is a long enough period for the persons in question to become an integral part of the community in which they live, and because of that, this right is a key element for the development of “social cohesion” in the Union.

Fostering freedom of movement as a factor of “social cohesion” in the EU is in conflict with the high level of unemployment in member states. This

¹⁵ “Second report of the European Commission on Citizenship of the Union”, cit. *Treaty of Amsterdam*, signed on December 2nd, 1997, came into power on May 1st, 1999 and *Treaty of Nice*, signed on February 26th, 2001, came into force on February 1st, 2003; only the decision procedure on these issues changed.

¹⁶ COM(2001) 257 final, “Proposal for a European Parliament and Council Directive on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States”, presented by the Commission of the European Communities, *Official Journal of European Communities*, C 270 E, 25/09/2001, pp. 150–160.

¹⁷ Residence permit would remain a required document for the Union citizen's family members who are not citizens of a member country.

“paradoxical mission” was pointed out by the Report of the High Level panel, which served as a basis for Commission’s Directive Recommendation on the Right of Movement from 2001. The Panel pointed out another crucial problem related to the freedom of movement in the EU in 1997 — the fact that the total number of EU citizens living on the territory of a member state other than their own was 5.5 million, which was only 1.5 percent of the total population of the EU (370 million).¹⁸

External aspects of the freedom of movement in the EU law

Realization of the freedom of movement, regardless whether its purpose is the functioning of a common market or the guarantee of personal rights, implies a gradual abolishment of border controls within the integrating area. The logical consequence of this process is the need to strengthen control on external borders of the entity, and the need to harmonize policies of member states on issues related to crossing external borders: visas, asylum and in general issues of migration/immigration.

The creation of jurisdiction of the EC comes with the Single European Act, but the failure to reach a consensus of all member states on these issues lead to the development of cooperation among a smaller number of members and on interstate level, outside the institutional framework of the EC/EU, and concretely in the framework of the Schengen system in the freedom of movement.¹⁹ However, on the level of the EU, there was a gradual policy development in areas connected to the external aspect of freedom of movement.

The Treaty of Maastricht, which put the right of freedom of movement within the EU in a somewhat different legal-political context, and EU bodies were given certain authorities in visa policy: with the introduction of Article 100c into the Treaty Establishing the EC, communitarian bodies have received authority to create common visa lists, as well as jurisdiction over establishing a unique visa format.

According to the legal basis set, the Council adopted the first visa regulation in 1995 — Regulation no. 2317/95, which regulates the obligation to possess visas for a short term stays of citizens of around 100 third countries.²⁰ More precisely, the Annex of this regulation enumerates 98 states and three entities (territorial

¹⁸ “Report of the High Level Panel on the free movement of persons, chaired by Mrs Simone Veil”, p. 8.

¹⁹ Schengen system is a special form of interstate arrangement, without any forms of supranationality which are a characteristic of the legal arrangement of the EU. The system is based on the Agreement between the governments of Benelux, Federal Republic of Germany and the French Republic on gradual abolishing of control on common borders (signed on June 14th, 1985) and the Convention on Application of the Schengen Agreement (signed on June 19th, 1990, came into power on March 26th, 1995). More in: Žaklina Novičić, „Sloboda kretanja ljudi u pravu EU”, op. cit. See also: Žaklina Novičić, „Ugovor Šengen III”, *Evropsko zakonodavstvo*, Institut za međunarodnu politiku i privredu, Beograd, 2005, no. 13, pp. 75–79.

²⁰ “Council Regulation (EC) No 2317/95 of 25 September 1995 determining the third countries whose nationals must be in possession of visas when crossing the external borders of the Member States”, *Official Journal of European Communities*, L 234, 03. X 1995, pp. 1–3.

governments that are not recognized as states by all of the EU member states), where, together with Taiwan and FYR Macedonia, FR Yugoslavia is listed. EU member states then do not have the obligation to harmonize their visa regimes with regard to the third countries which are not listed on the “black” visa list of the EU. The 1995 Regulation was annulled and replaced by Regulation no. 574/1999 due to breaches of procedure.²¹ As far as countries on the “black” list are concerned, the second visa Regulation is not much different than the first one. The novelty is the “advancement” of FR Yugoslavia and FYR Macedonia from “entities” into “states” on the “black” visa list.

However, since the beginning of the nineties, with the application of the Schengen Agreement, there are visa *lists* (“black”, “white” and “grey”) and they account for a smaller number of EU countries. On the “black” list there were 30 third countries more than on the “black” list of the Council Regulation. Also, member states of the Schengen Agreement have harmonized the “white” list with around 40 third countries of visa free regime. The “gray” Schengen visa list was made up of the third countries for which only some of the member states of the Schengen Agreement introduced the visa regime.²² The difference in the Schengen and the EU list is a result of different membership in these arrangements, i.e. the special position of Great Britain, which is not a part of the Schengen Agreement, but have also prevented putting the Commonwealth countries, with which it has free regime of traveling, on the EU “black” visa list.

The Treaty of Amsterdam (1997) legally clarified the situation and paved the way for harmonization of the Schengen with the EU visa lists. The first step forward was made by establishing a legal basis for integrating the Schengen attainments in the legal system of the EU. Following that, this constitutional revision legally formalized the opt out position of Great Britain (as well as Ireland and Denmark) and the possibility of the so-called closer cooperation of smaller number of member states in the framework of the EU institutional system. Finally, the Treaty of Amsterdam announces the “gradual creation of the area of freedom, security and justice”, and for that purpose Article 100c of the ToEC was cancelled, and the issues of visa, together now with the issues of asylum, crossing of external borders and immigration in general have been given a whole section in the Treaty Establishing the EC (Section IV: Visas, Asylum, Immigration, and Other Policies Related to the Free Movement of Persons). The novelties in the Section IV are, among other things, the legal framework and the expanded jurisdiction of EU bodies in visa policy. The Council received the authority to decide (on the recommendation from the Commission and consultation of the Parliament) not

²¹ “Council Regulation (EC) No 574/1999 of 12 March 1999 determining the third countries whose nationals must be in possession of visas when crossing the external borders of the Member States”, *Official Journal of European Communities*, L 72, 18/03/1999, pp. 2–5.

²² For Schengen visa lists see: “Decision of the Executive Committee of 28 April 1999 on the definitive version of the Common Manual and the Common Consular Instructions”, SCH/Com/ex (99) 13, *Official Journal of European Communities*, L 176, 10/07/1999, pp. 344–346.

only on the “black”, but also on the “white” visa list, which means that there is no longer a third country in relation to which member states have a sovereign power of unilateral decision whether to introduce the visa regime or not (unless previously they do not take up the opt out position, which is still used in the area of freedom of movement by Great Britain, Ireland, and in certain cases, Denmark).

After Amsterdam, in March 2001, Council Regulation no. 539/2001 was adopted.²³ Visa lists which it comprised are in most cases the same as the Schengen “black” and “white” visa list: in Annex I of this Regulation 131 third country and three entities are listed which are subject to the EU visa regime, while in Annex II 43 third countries and two entities are listed which are in the visa free regime with the EU. Regulation 539/2001 was amended twice with Council Regulations 2414/2001 and 453/2003.²⁴

In the Proposal for Council Regulation no. 539/2001, the Commission states that before making a decision whether citizens of the third country are subject to an EU visa regime or exempt from it, a number of criteria should be taken into consideration, and the main points are: a) illegal immigration: visa rules represent the main instrument of control of the migration flow; b) public policy: introduction of the visa regime can be a response to the serious level and territorial reach of certain forms of crime; c) international relations: the selection of the visa regime towards a third country can be a means of emphasizing a certain type of relationship which the Union intends to establish or keep with that country.²⁵ The Commission has stated in the same document that, having in mind the differences in situations in third countries and their relations with the EU and member states, set criteria cannot be applied automatically, but that they will, as decision making instruments be used flexibly and pragmatically, based on individual cases.

The content of visa lists does not allow reliable conclusions on which criteria was applied to each individual country. An attempt to generalize countries on visa list might lead to the following conclusion: that almost the whole of Africa is on the “black” list, that most of the South American countries of the Spanish and

²³ Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement”, *Official Journal of European Communities*, L 81, 21. III 2001, pp. 1–7.

²⁴ “Council Regulation (EC) No 2414/2001 of 7 December 2001 amending Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders of Member States and those whose nationals are exempt from that requirement”, *Official Journal of European Communities*, L 327, 12/12/2001, pp. 1–2. “Council Regulation (EC) No 453/2003 of 6 March 2003 amending Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement”, *Official Journal of European Communities*, L 069, 13. III 2003, pp. 10–11.

²⁵ COM(2000) 27 final — 2000/0030 (CNS), “Proposal for a Council Regulation listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement”, *Official Journal of European Communities*, C 177 E, 26. VI 2000, pp. 1–5.

Portuguese speaking areas are on the “white list” (with the exception of Columbia and Peru), that none of the countries with a primarily Muslim population are not on the “white” visa list (with the exception of Brunei), and that all of the Pacific island countries are on the “black” visa list.²⁶ Therefore, the author of this generalization warns that visa lists might suggest that in their formation the first “level of privileges or discrimination” are race and religion, and the second level of privilege is wealth. A number of groups for the protection of human rights, as well as the UNHCR criticized the approach and the principle as well as the creation of ‘Fortress Europe’. Also, the lack of transparency in creating lists, i.e. the lack of official reports which would explain the position of every individual country, is worth of criticism. Only in the cases of Bulgaria and Romania there are reports, and they are taken as basis for analysis of the criteria for the liberalization of the EU visa regime.

It must be pointed out that the abolishment of the EU visa regime towards third countries is based on the estimation of each state of in three key areas — opinions given by EU bodies: the Commission puts forward the proposition, the Parliament gives its opinion, the Council for Justice and Internal Affairs reaches the political agreement, and the formal decision is brought by the EU Council for General Affairs.

*Liberalization of the EU visa regime towards third countries:
the cases of Bulgaria and Romania*²⁷

The compulsory EU visa regime for Romania and Bulgaria was introduced in 1995 with Council Regulation 2317/95. According to current visa Regulation from 2001 (539/2001) Bulgaria and Romania are “taken off” the “black”, i.e. listed on the “white” visa list. The Commission, which recommended the abolishment of the visa regime for Bulgarians and Romanians, stated that it reached the final conclusion upon the considerable progress of these two countries in fulfilling prescribed EU conditions on the basis of two reports.²⁸ These reports provide an overview of legal, financial and operative instruments in which these two countries have in terms of border control, combating illegal migration and repatriation of their citizens illegally settled in EU member countries. The Commission pointed

²⁶ Elspeth Guild, *Moving the Borders of Europe*, Publicaties Faculteit der Rechtsgeleerdheid, University of Nijmegen, Internet, 01/04/2003, <http://www.jur.kun.nl/cmr/articles/oratieEG.pdf>.

²⁷ This part of the article is a short version of an already published article: Zaklina Novicic, “Liberalizacija rezima viza Evropske Unije prema trecim zemljama: slucaj Rumunije i Bugarske”, *Evropsko zakonodavstvo*, Institut za medjunarodnu politiku i privredu, Beldrade, 2003, no. 6, pp. 80–84.

²⁸ COM(2001) 61 final, Volume I: “Report from the Commission to the Council regarding Bulgaria in the perspective of the adoption of the Regulation determining the list of third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt of that requirement”, Volume II “Intermediate Report on Visa Issues — Romania”, Brussels, 02. 02. 2001. Internet, 01/03/2003, http://www.europa.eu.int/eur-lex/en/com/rpt/2001/com2001_0061en02-01.pdf.

out also that the other reason for its recommendation that the process of enlarging the EU has reached its final stages, and that negotiations were opened with both Romania and Bulgaria.

The abolishment of the visa regime for Bulgarian citizens fully began when the regulations of 2001 came into effect (April 2001). Romania, however, although it was formally on the “white” visa list, was conditioned by one more Commission Report, one more Commission Recommendation for the revision of the 2001 Regulation, and a decision from the Council Regulation (Council regulation no. 2414/2001). So the abolishment of the visa regime for Romania finally came about more than half a year after Bulgaria — in the beginning of 2002.²⁹

Generally speaking, the primary goal of the EU was to, before it opens its borders for the free entrance of Romanians and Bulgarians, protect itself from the illegal immigration of which Bulgaria and Romania would be either countries of origin or countries of transit. In short, the EU asked these countries: to regulate the problem of illegal immigration (through readmission contracts), and to secure themselves from future illegal migrations (by efficient border control, reliable traveling documents, harmonizing the visa regime towards third countries with the European visa regime). As candidates for the liberalized EU visa regime, Bulgaria and Romania carried out a number of concrete measures.

a) Repatriation

In both countries, a series of readmission repatriation (return to citizenship) agreements were in force (or in process of ratification). Those are bilateral agreements which regulate the return of the illegal immigrants to the country of origin. The two countries signed contracts with almost all EU countries, a few of the candidate countries, and other third countries (especially ones with high migration potential), as well as among each other.

The obligation to return to the country of origin is usually applied to the citizens of the signatory countries. However, Romania has taken on additional commitments in agreements with a certain number of countries. It undertook the obligation to receive back illegal immigrants who do not possess valid documents if it is assumed that they are Romanian nationals, as well as citizens of third countries in case the authorities of the interested state prove that the person came from Romanian territory.

The Commission warned Romania that the simplified procedure of renouncement of Romanian citizenship, used by Romanian citizens in EU

²⁹ COM(2001) 361 final, “Report from the Commission to the Council — Exemption of Romanian citizens from visa requirement”, Brussels, 29/06/2001. Internet: 01/03/2003, http://europa.eu.int/eur-lex/en/com/rpt/2001/com2001_0361en01.pdf. COM(2001) 570 final — 2001/0231 (CNS), “Proposal for a Council Regulation amending Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement”, *Official Journal of European Communities*, C 25 E, 29. I 2002, p. 495.

countries as an opportunity to come back to the country of one's origin was unsustainable. Romania assumed the obligation to deny their citizens the possibility of renouncing their citizenship, except in cases when they have already acquired another citizenship, etc.

With a view to implement the readmission agreements and international cooperation on combating illegal immigration, Romania signed bilateral agreements with a number of EU member states on appointing a 'home affairs' attaché or police liaison officers. These persons are sent by Romania to its diplomatic departments in EU member states for a limited period of time (1–3 months) with a status of military attaché.

b) Visa policy

Both countries were in the process of harmonizing their visa policies with EU policy simultaneously with the decision to abolish the visa regime. Bulgaria introduced a visa regime for citizens of a number of countries (e.g. Bosnia and Herzegovina, Ukraine, Russia), while it kept the visa free regime for the citizens of FR Yugoslavia (Serbia and Montenegro) and FYR Macedonia. The Romanian government agreed to introduce a visa regime for Russians and Ukrainians before the end of 2001 (unilaterally, unless a bilateral agreement is not reached before this time), to require the Moldavians to possess a passport on entering Romania (on the basis of the bilateral agreement between Romania and Moldavia, the citizens of these two countries crossed the common border only with an identity document), and that it will discuss introducing the visa regime for them, as well as for the citizens of BiH, FR Yugoslavia, (SCG), FYR Macedonia and Turkey according to further development of relations of the EU towards these countries.

In terms of procedures for issuing visas, Bulgaria set up a computerized Center for Visas within the Ministry of Foreign Affairs (connected also with the Ministry of Interior) which collects data on visa applications from all Bulgarian diplomatic and consular departments in the world, and which is connected with all the Bulgarian border crosses. Romania was beginning to create a similar *on-line* communication system which was in part financed by the *PHARE* program.

Both countries introduced legal measures (e.g. the Law on Foreigners) canceling the option of issuing visas at the border except in extraordinary circumstances.

c) Security of documents

Security and reliability of documents (identity documents and passports) is an EU requirement. In order to satisfy the EU standards regarding the security measures against forging of documents, Bulgaria first adopted a new Law on Personal Documents in April 1999, which introduced a new type of passport for its citizens with numerous characteristics which prevent forging, and until December 2002 finished exchanging old passports for new passports. Bulgaria improved the security of personal documents of foreigners, refugees and eupatrids (persons with

no country affiliation). Besides that, Bulgaria prescribed a more rigorous procedure in the case of lost or stolen passports, and instituted a computerized Information System for the issue of personal documents which collects data on non-valid documents and which is connected (*on-line*) with all border crossings.

As far as Romania is concerned, the Commission in its first report judged that the Romanian national data base on issued passports and identity documents is not centralized, that the Romanian passport is still not harmonized with EU standards, and that the procedure of replacing it with a more secure document must be finished by May 2004. In its second report the Commission welcomed the Regulation passed by the Romanian government on the replacement of existing passports of citizens, refugees and eupatrids with a new type of passport which has additional security characteristics.

Bulgaria introduced provisions for harsher punishment of forgers and abuse of personal documents in its criminal law, while Romania committed itself to doing so.

d) Control and supervision of border crossing

During the Commission's report on Bulgaria, it was in the middle of replacing a conscripted border service with a professional border police (National Border Police) for which it established a Center for Specialization and Professional Training. Bulgaria, partly with the funds from the *PHARE* program, introduced a computerized system for monitoring border crossings. Also, Bulgaria adapted border crossing at the request that the Ministry of Interior, through an appropriate information system, is consulted on potential limitations upon entering the country, and that visa validity is checked via the *on-line* connection with the Center for Visas of the Ministry of Foreign Affairs. The Commission positively assessed that Bulgaria maintains satisfactory border cooperation based on bilateral agreements with Greece, Romania, Turkey, FR Yugoslavia (SCG) and FYR Macedonia.

In the case of Romania, the Commission in its first report, identified that the implementation of investment programs connected to border control were delayed, that there is a lack of technical equipment to monitor border crossings, and that it is a consequence of a lack of financial resources. In the second report the Commission welcomed the passing of the Special Order on Romanian Border and the Special Order on the Organization and Functioning of the Border Police, which started the process of modernizing the Romanian Border Police, modeled after EU member states. The Commission noticed that the government made significant progress in terms of investing in the equipment, which increased operational capacity and was confirmed by statistical data. The Romanian government agreed to draw to a close in the shortest possible period the obligation of forming a strategy for integrated border management, and consider adopting the agreement on cooperation of border management with EU member states as well as other neighboring countries.

An important question to which the Commission pays attention to is the issue of corruption on border crossings. The Commission welcomed the introduction of

disciplinary measures by Bulgaria which resolved a number of corruption cases at the border. Simultaneously, the Commission pointed to a big problem at Romanian border crossings, the importance of combating it, and the need for cooperation with neighboring countries. In the second report on Romania, the Commission “expressed hope” that actions taken regarding the fight against corruption will yield results. Romania agreed to adopt a comprehensive plan for combating corruption.

e) Other measures of migration policy

Although everything above indirectly relates to migration policy, we will state several measures which are directly dealing with it. Bulgaria introduced more rigorous sanctions for illegal immigration regarding those committing the crime as well as accomplices (e.g. transporters, tourist agencies, etc.). Romania committed itself to raising punishments for illegal immigrants of Romanian origin whose destination is one of the EU countries and increase control of activities oriented towards potential migrations (e.g. international tourism).

In the interim between the first and second reports, Romania passed the Law on Foreigners (May 2001), because the Commission in its first report warned of that legal framework regarding illegal immigration was non-existent and that existing laws were outdated. The Commission pointed out that compared to the other candidates for EU membership, there is a high level of asylum demand from Romanian citizens in the EU.

Among several additional measures recommended by the Commission to the authorities of these two countries, is that there is a necessity to inform their citizens on the precise content of the liberalized EU visa regime. The Commission finds it very important that there be an understanding of what the liberalized EU visa regime is, and in particular what it is not. This applies to the liberalized visa regime towards a third country for a stay of up to three months (exceptionally for longer periods), and that longer stay visas are still in jurisdiction for national bodies of member states. In sum, it could be said that Romania met the EU standards to a lesser degree than Bulgaria. Most of the activities that Bulgaria has completed in this regard, were in Romania, at the moment of writing the Commission’s Report, either at the beginning or on going. By suggesting that the visa regime is abolished for Romanians, the Commission had in mind that it might encourage Romanian citizens to “take advantage of the new situation”, but it concluded that it does not expect an enormous increase in the number of illegal residents from Romania. Finally, the Commission perceived the situation in a wider context — in the context of EU enlargement, the future accession of Romania, the political importance of this issue in Romania, as well as pressures of public opinion which saw keeping the visa regime for the Romanians and abolishing it for Bulgarians as discrimination and humiliation.

SERBIA AND MONTENEGRO — CONDITIONS FOR THE “WHITE SCHENGEN LIST”

by

Milorad Ivanović¹

Negotiations on the Stabilization and Association Agreement with the European Union will include the issues for which successful solutions depend on the EU's decision to abolish visas for the citizens of Serbia and Montenegro. The European Union classifies these issues in the group titled “Justice, Freedom and Security”. The essence of this group, from the point of abolishing visas, contains four areas, which together are called: “control and prevention of illegal migration”. These four areas are: visas, migration, asylum and border control.

If Serbia and Montenegro accomplishes significant success in reforms in these four areas, i.e. if the effect of reforms is the efficient combating of illegal migrations of the citizens of SCG, as well as foreigners, crossing its territory illegally towards the EU member states, then it can be expected for our country to be placed on the positive list of the EU's visa regime. In other words, its citizens will be exempt from visa requirements for a stay on the territory of Schengen Agreement member countries, for up to three months. The reforms practically mean: the harmonization of existing standards of SCG (regulations, institutions and their practices) with European Union standards in the aforementioned four areas.

The reform process until now was not suitably coordinated and much slower than the country's existing potential allows (we have experts in all of these areas, capable of offering solutions according to the highest standards). Negotiations for the Stabilization and Association Agreement represent a chance to begin serious, well-coordinated and, therefore faster work on reforms in all of the aforementioned areas. The negotiations and the reforms will create a harmonized dynamic of change, which must lead to positive results. In doing so SCG can count on the full

¹ Consultant of the Group 484.

support of the European Union and other European organizations of both a wider and narrower regional character.

For several years now, the international community and especially the European Union, have undertaken concrete measures and have invested considerable financial means in order to create better conditions for the reform process in in Serbia and Montenegro. This is manifested through a series of EU projects for training, i.e. introducing the representatives of the authoritative bodies and institutions, but also the general public with the standards of the European Union. The CARDS regional program whose aim is to provide education on EU standards in the areas of visas, asylum and migrations is in its final stage, and a similar CARDS project in the area of integrated border management is the beginning of its realization.

Serbia and Montenegro could significantly improve its position with respect to relations with the European Union, when it comes to prospects for abolishing visas for its citizens to travel to the territory of the Union, if the reforms in the following areas were successful:

In the area of visas:

It is necessary to adopt new laws and acts which, according to EU standards, regulate conditions for the entrance and stay of foreigners, including the issuing of visas to foreigners;

On the basis of these regulations, to establish an efficient and functional mechanism for issuing visas which secures the connection between all governing bodies involved in the process of issuing visas;

These regulations and mechanisms should provide the issuing of a secure visa which would meet the highest standards against forgery;

The visa regime of Serbia and Montenegro toward other countries should be fully harmonized within the country (the existing differences in Montenegro and Serbia should be resolved).

The visa regime of Serbia and Montenegro should have a constant tendency of harmonizing with the visa regime of the European Union (it should be careful that premature harmonization does not jeopardize the country's interest in bilateral relations with other third countries).

In the area of asylum:

It is necessary to complete the process of adopting new regulations (together with the framework law on asylum of Serbia and Montenegro, which was put into power in March 2005, it is necessary to pass laws on asylum on republican levels in Serbia and Montenegro, as well as in series of sub-legal acts;

On the basis of these regulations it is necessary to establish a new (nonexistent in SCG now) asylum system, which would ensure efficient protection of all those

foreigners who, according to all international regulations, fulfill the conditions for negotiation of refugee status.

In the area of migration:

Adopt regulations regarding the movement and stay of foreigners in accordance with EU standards;

Establish a mechanism for migration control (both for its own citizens and foreigners) which would, as a consequence, significantly decrease the presence of illegal migrants on the territory of the European Union, originating from SCG, and those who reach the EU through or over its territory;

Continue with signing, and efficient enforcement of readmission agreements with EU member countries (on admission of its own citizens and foreigners who reached the territory of the EU, and illegally stay there, from the territory of SCG);

SCG needs to bring new regulations on issuing travel documents of its own citizens and on the basis of them, begin issuing new secure passports, protected from forgery according to the highest standards.

In the area of border control:

It is necessary to adopt regulations which would, on the basis of European Union standards, create conditions for establishing a system of integrated border management. This means that border control will be secured through the coordination of all bodies participating in controlling the movement of people and goods across the border. The aim is for the border to be open for all who meet the conditions for crossing it and closed for all unwanted persons and goods which do not meet the criteria for import or export.

All the aforementioned conditions are the minimum for what must be met in order to create the conditions necessary for a positive decision from the EU on abolishing visas. However, it is most important that all measures applied in practice be efficient and should guarantee the combat of illegal migrations towards the European Union. When a country does not represent a risk for the European Union from the point of illegal migrations, then it has good chances for its citizens to travel free on the Union's territory.

CURRENT ISSUES IN REFORMING THE VISA SYSTEM IN SERBIA AND MONTENEGRO

by

Vlado Ljubojević¹

It is undeniable that the full liberalization of the visa regime with other states is a priority of all Western Balkan countries because the restrictive visa regime affects all categories of citizens by limiting one of the basic attainments of the modern democratic society — the freedom of movement. National strategies of a Western Balkans for liberalizing the visa regime with the European Union (EU) and neighboring countries are similar in the area which regards the procedure of harmonization of national rules and practice of EU standards, but different in terms of ways, quality and deadlines met in reaching those standards.

Intensive preparation for establishing a more suitable political and legislative framework for the liberalization of the visa regime and further reforms in that area in Serbia and Montenegro (SCG) started during 2002 and 2003. The SCG Council of Ministers brought a decision on the unilateral abolishment of visas for the citizens of the 40 most developed countries in the world, including all EU member states and then candidate countries. In that way the proclaimed visa regime became a clear signal and expression of the international position and orientation of SCG. On the other hand, that decision was an important step towards the harmonization of the visa regime in SCG where objectively, there are certain differences in regarding the entry and stay of foreigners (the citizens of Russia, Ukraine and Albania enter Montenegro without visas and Serbia with visas, and the citizens of the EU member states and former Yugoslav republics, except BiH can enter Montenegro with their identity documents and Serbia with a passport).

In the aim of further harmonization, a procedure was started on the level of the state union for signing agreements with Russia and Ukraine on the mutual traveling of their citizens. From our side there is a proposal to simultaneously sign bilateral agreements readmission on which Russia and Ukraine are still in consultation with

¹ Minister plenipotentiary, Serbia and Montenegro Ministry of Foreign Affairs.

their authorities. Harmonization of the visa regime is very important for SCG, and the EU consistently insists on it because existing differences create problems in practice. For example, when a foreigner enters Montenegro without a visa and continues to Serbia where he needs a visa which he does not have.

Having in mind the importance of the regional aspect of the policy of abolishing visas for the facilitation of the flow of goods, people and services, a faster process of European integration and convergence of the countries of the region to the EU, SCG has liberalized the visa regime with neighboring countries except with Albania which has a free visa regime with Montenegro but not with Serbia.

In order to improve the control of illegal migration, which goes through SCG to EU countries. Agreements with many African and Asian countries, where traditionally the biggest number of migrants originated, were revoked.

As a reaction to the decision of SCG on the unilateral abolishment of visas for the citizens of 40 countries, some EU member states relaxed visa requirements to citizens of SCG. An Agreement on Terms of Traveling was signed with Hungary and it came into power on October 22, 2004. based on this agreement, SCG citizens get visas through a simplified procedure for a longer period of time without taxes, and transit through Hungarian territory is done without a Hungarian national visa, in case they have a valid Schengen visa or a residence permit in some of the countries of the Schengen agreement.

According to the conclusion of the Slovenian government on June 9, 2003 the citizens of SCG are allowed transit and short stays to 90 days on the territory of the Republic of Slovenia, without the obligation of having a Slovenian visa, in the case they have a valid Schengen visa or a residence permit in some of the countries of the Schengen agreement.

Through government regulations and decisions, Poland, Slovakia and the Czech Republic, in the period of 2004–2006, have cancelled visa taxes for the citizens of SCG.

Based on the Regulation of the SCG Council of Ministers on Issuing Diplomatic and Official Passports from 2003, which considerably decreased the number of users of those passports because it ascribed a more restrictive procedure for their issuing, SCG has until now signed 8 bilateral agreements with EU countries on canceling visas for SCG diplomatic and official passports (Austria, Greece, Italy, Hungary, Slovakia, Slovenia, Spain and Cyprus) and, with the other 8 countries the negotiations for signing the agreement are in progress.

The primary orientation of SCG state bodies and the non-governmental sector is the full liberalization of the visa regime with the EU for all categories of citizens of SCG, i.e. entering the “positive” Schengen list. Thanks to information campaigns on this issue, our citizens are mostly familiar with the fact that for moving towards this list certain conditions need to be met and European standards reached in many areas which are relevant for control and combating illegal migrations. It is a long term process which will be done by experts in different areas. For now, modest

results are achieved but they will in a short time, when the ongoing projects are completed, be more positive. What is encouraging is that from the Ministry of Interior (MUP) of Serbia positive signs come in terms of institutionalizing European integration, bilateral cooperation with certain countries of the EU and establishing a more functional coordination with other ministries and institutions in SCG.

In short, in the area of visa regime, the following has been done. Inter-department task force coordinated the Draft of the Law on Foreigners on the level of state union which regulates the subjects of issuing visas and stay of foreigners on the territory of SCG. The Draft includes all relevant EU standards in the area of visas. The work should have been completed several months ago, but it was not for reasons other than expert characteristics. Now the faith of that Draft depends on the outcome of the referendum in Montenegro, when it will be seen whether there is a need for the Law on Foreigners on the level of the state union or the Draft will, with certain corrections, become the Law on Foreigners of the Republic of Serbia. The main provisions which regulate the matters of issuing visas in diplomatic consular departments (DCD) of SCG are prepared in the Ministry for Foreign Affairs (MFA) in the form of a draft, as well as the complete material of the general solution for information-technical system in the area of visas, which was done by MUP of the Republic of Serbia and SCG MFA and it entails the latest and standards of the EU. The normative part of adjusting the visa system to the EU's standards can be finished relatively fast. The financial support for the development of the information-technical system and training of officers for the new approach to issuing visas, before all in the SCG DCDs, remains a priority.

According to EU policy towards the Western Balkans, and after an objective evaluation of what was done in the control of illegal migrations, the European Commission initiated preliminary talks on the Common Agreement on Readmission and Agreement on Visa Flexibilities for the citizens of SCG, which were held in Brussels on May 25–26, 2006.

Due to a comprehensive information exchange, the delegations of the European Commission and SCG harmonized positions during the talks on all basic principles and important demands for closing the agreements. The representatives of the European Commission judged the demands of SCG as realistic and acceptable. Our side suggested a wider category of citizens, from students, scientific and cultural workers, athletes, journalists, state officials, persons traveling to visit close relatives, to business people and drivers in transport companies, which can count on the following visa flexibilities: decrease in the number of documents which are submitted with the application, issuing visas for a longer period of time, including multiple visas for the duration of 1 to 5 years, and a shorter period of data processing and cheaper or free visas.

The European Commission already notified the EU Council with a positive recommendation. It is expected that the EU Council, at the latest in July, will issue a mandate for negotiations in signing the agreement. The negotiations could start

in the second half of this year. They will be only technical in nature because agreements have already been reached on all key issues.

Recently, the EU Council allowed the increase of the costs for processing applications for issuing the Schengen visa from 35 to 60 euro. The decision comes into force on January 1, 2007, but its application is postponed for a year for countries which by the end of 2006, receive the mandate from the EU Council to start negotiations on Agreement on Visa Flexibilities with the EU, and after signing the agreement the prices stipulated in the agreement will apply.

EU visa relaxations for citizens of SCG are a realistic result of what has been done in SCG so far, and what could be achieved. A lot of effort and coordinated political, diplomatic and expert authorities expect us to be on the way to the “positive” Schengen list.

In February 2005, the SCG Council of Ministers instructed the Ministry of Foreign Affairs of the State union (MFA) to, in cooperation with the authorized bodies of member states, take necessary measures for harmonization of the visa system of SCG with Schengen standards. Undertaken activities included these measures:

- on the normative plan, harmonization of legal acts of SCG in the area of visas with EU standards,
- harmonization of the SCG visa system,
- defining the model for information systems and creating technical conditions for its applications,
- signing the agreement on the abolishment of visas with the countries of the EU for holders of diplomatic and official SCG passports, and
- relaxation of the EU visa regime for certain categories of SCG citizens.

Normative activities — a Draft of the Law on Visa Systems of the SCG is made in the MFA which includes all relevant Schengen standards and handed to the MUPs of Serbia and Montenegro for further synchronization. Schengen standards are a part of the Draft of the new Law on Visa Systems and the Law on Foreigners.

Harmonization of the SCG visa system — Following the principles from the European Partnership and the Feasibility Study, the EU in the area of visas, migrations, asylum and integrated border management, negotiates with SCG according to the one track principle, which means that Serbia and Montenegro has a unified position on every question which is being negotiated. In past negotiations, the harmonization of the visa system in SCG was the problem up on which the EU insisted the most. Some differences have been removed and the following needs to be done — establish a visa regime towards Russia, Ukraine, Albania (with Montenegro visa free, with Serbia visa regime) and citizens of the former Yugoslav republics, except BiH (for entering Montenegro they need only the identity card or Serbia passport). With Russia and Ukraine the texts of the agreement on the mutual travel of citizens have been exchanged, with which in the case of Serbia, a visa free regime will be established with these two countries. For final harmonization it is needed to remove differences with Albania and former Yugoslav republics.

Defining the model of information systems and creating technical conditions for its application — Based on the experiences of some European countries (Hungary, Austria, FR Germany), MFA and MUP of RS created joint material on structure of the IT system in SCG. The talks with the European Agency for Reconstruction (EAR) are initiated for financing this project, but for its realization it is necessary to assure certain conditions, before all the legal framework (adopting the Law on Visa Systems or Foreigners which includes provisions on IT system), as well as the unique position of Serbia and Montenegro regarding the IT system.

Signing the agreement on the abolishment of visas with the countries of the EU for the holders of diplomatic and official SCG passports — The Regulation of MFA on Issuing Diplomatic and Official Passports from 2003, the number of holders of diplomatic and official passports of SCG is limited in relation to previous practice which enabled the start of negotiations with the EU countries on the agreement on abolishment of visas for this type of passport.

Relaxation of the EU visa regime for certain categories of SCG citizens — The EU Commission Communication from January 27th, 2006, announced separate negotiations with the countries of the Western Balkans on visa relaxation for certain categories of citizens. As primary conditions for the successful completion of negotiations, the EU Commission has stated in the agreements on readmission, the issue of efficient border management, police training and the protection of documents. It is planned that together with the agreement on visa relaxation, the common agreement with the EU on readmission is signed.

The Commission Communication from January 27, 2006 brings the proposal for establishing a visa free regime for small border traffic on external borders of the EU, including the borders with the countries of the Western Balkans. According to that proposal, the inhabitants of the border areas could cross the border using permits for small border traffic. This proposal, for SCG, for now applies only to the border with Hungary, for persons who have a legitimate need to cross the border often for social, cultural and economic reasons. With regard to this, SCG must ensure strong guarantees that this relaxation will not be abused for the purpose of illegal migration and organized crime, which will be a sort of test of our readiness and abilities.

THE VISA REGIME IN BOSNIA AND HERZEGOVINA: DEVELOPMENT OF A LEGAL AND INSTITUTIONAL FRAMEWORK IN ACCORDANCE WITH THE STANDARDS OF THE EUROPEAN UNION

by

Zoran Perković¹

Introduction

Support through intensifying the relations between the European Union and the Western Balkan countries is built on experiences used in the process of the EU enlargement, like the introduction of the European partnership. European partnership stipulates long and short term priorities in activities which will support the convergence toward the European Union.

Short term priorities for Bosnia and Herzegovina concern 16 areas, i.e. conditions listed in the Feasibility Study published on November 18th, 2003. These are related to the political situation in BiH, economy, security and progress in the realization of technical conditions in the Stabilization and Association Agreement.

Among the short term priorities of the European Partnership and the recommendations of the Feasibility Study is the establishment of an appropriate structure for migration and asylum. The New Law on the Movement and Stay of Foreigners and Asylum, as well as the efficient asylum and migration state policy is seen as a mid-term priority. Also, improvement of administrative capacities of the visa regime with an emphasis on checking visa applications is another mid-term priority.

Liberalization of the visa regime with countries of the European Union is one of the strategic priorities of Bosnia and Herzegovina. BiH citizens are required to hold a visa for EU countries. This situation is a consequence of the risk of migration due to a high number of refugees and displaced people, and high unemployment rate

¹ Assistant Minister of Foreign Affairs, Bosnia and Herzegovina.

caused by poor economic performance in post-war BiH. In the past few years, pressure for abolishing or alleviating the visa regime is increasing. According to the official data, in 2004 47 million people are registered to have entered or left the territory of BiH. 10,469 people were denied entry in BiH because they did not meet the required criteria for entry.

“Liberalizing the visa regime of the EU is a long term goal for Brussels, but the countries of the Western Balkans cannot expect that it will happen before they reach the later stages in negotiations for full membership in the EU, i.e. before they submit their candidacy”, Franco Frattini, vice-president of the European Commission stated in an interview on November 30th, 2005.

Today in BiH, there is an awareness of the need for development of administrative capacities as well as the realization the advance in negotiations towards the liberalization of the visa regime will depend on each country individually following their reforms in the administration of justice and the fight against illegal immigration, human trafficking and organized crime.

Institutional framework

Institutions directly involved in carrying out the activities related to the visa regime in BiH are the Ministry of Foreign Affairs, Ministry of Interior, State Border Service as well as the administration within the Ministry of Interior.

The BiH Council of Ministers is in charge of making decisions on countries whose citizens are exempt from the visa regime upon entering, leaving and transiting through BiH. At the BiH level a central data base (CIPS) on issued identity documents for citizens of BiH (identity card, passport, driver's license, etc.) was set up. These documents are issued in accordance to the ICAO standard, based on ascribed procedure and identification control. Bosnia and Herzegovina issues personal documents complying with the highest standards of protection. In this way full control is maintained over the issued documents, and the data are centralized and available only to bodies and institutions directly involved in their issuing and control.

The BiH Ministry for Foreign Affairs has 44 diplomatic-consular departments abroad authorized to issue visas. BiH DCDs forward all the visa applications, including the accompanying documents to the Ministry of Interior for inspection. Since November 1, 2004 visas are electronically processed when a DCD sends the data directly to the BiH Ministry of Interior for inspection. In this stage of system development, the inspection consists of controlling whether the person is prohibited to enter BiH, if there is a court ruling that found that person guilty of a crime committed in BiH, and if Interpol has issued a warrant for that person's arrest. Strengthening the position of the Ministry of Interior creates a base for the future improvement in the areas of migrations and visas.

The Consular department of the BiH MFA does not have access to the system, but receives the information only when the visa is printed. The consular staff of the BiH MFA usually issues visas without additional checks unless there are

complaints in the process of consultation. In this way, there is no element of evaluation in the veracity of the statement according to personal judgment.

The State Border Service in BiH was established in 2000. The establishment of this Service led to the decrease in the number of the illegal migrants in the period between 2003 and 2004. In 2002, the year that preceded the Law on the Movement and Stay of Foreigners and Asylum ("Službeni glasnik", no. 29/03 and 4/04); the number of apprehended illegal migrants was around 2,500. With the introduction of the new measures, the number of illegal migrants declined sharply so in the first half of 2004 only 133 persons were arrested for crossing the border with an aim of illegal migration. In 2004, a total of 446 persons were expelled from BiH.

The State Border Service is in charge of issuing visas at the border. Visas are issued on the 14 bigger border crosses which are connected with the electronic visa system (CIPS). In 2004, 6,000 visas were issued at the border and half were issued to officials of new EU member states. In 2005, around 2,800 visas were issued at the border, while in the first quarter of 2006 (1/1 to 31/4) a total of 226 visas were issued. This drastic decrease in the number of visas issued at the border was mainly due to stricter requirements for visa issuing at the border, the one-sided abolishment of visas towards the 10 new EU member states and the expansion of the diplomatic-consular network of BiH. Following the recommendation of the BiH MFA, on the border crossing a single entry visa can be issued and the duration of stay cannot exceed 15 days.

Cooperation between all governmental bodies involved in the process of issuing visas is a precondition for the efficient fulfillment of obligations set by current regulations. So, cooperation between the MFA and Ministry of Interior is of the utmost importance. Especially when the Ministry of Interior assumes the responsibilities which now lie in the offices for foreigners and in canton ministries of internal affairs in the BiH Federation and centers for public security in Republika Srpska.

In order for the bodies in charge of visas to work efficiently and in a way for the country to have reliable visa regime, departments and institutions are equipped, both with personnel and technology, to provide quality services related to the BiH visa regime. BiH State Border Service is considered to be among of the better ones in South-East Europe.

The Ministry for Foreign Affairs has, together with the CIPS, created a temporary data base of issued visas. This program includes the entry of applications for visas, control in the foreigner register and the electronic printing of the stickers. It has already showed very positive results. The regular training of staff employed in issuing visas is performed in cooperation with the IOM.

Legal framework

The visa regime in Bosnia and Herzegovina is arranged according to the Law on the Movement and Stay of Foreigners and Asylum which was enacted by the

BiH Parliament in October 2003. This law replaced the Law on Immigration and Asylum from 1999.

Law on the Movement and Stay of Foreigners and Asylum (here after: Law on Foreigners) regulates conditions and procedures for the entry and stay of foreigners in BiH, reasons for declining the permission of entry and stay, reasons for canceling the residence permit, expulsion from BiH, the procedure for applying for asylum, granting of asylum, the seizure of it, the jurisdiction of governmental bodies important for the implementation of this law, and other issues connected to the asylum, stay and movement of foreigners.

Article 23 of the Law on Foreigners states that a visa is a permit which allows entry and stay on the territory of BiH, as well as transit through the territory of BiH during a time period. A foreigner can obtain a visa if they comply with the general conditions of entry, unless he/she is not registered as an international lawbreaker with the authorities.

Conditions and procedures for entering BiH, as well as other issues concerning the entry of foreigners, issuing visas on the borders, form and content of the guarantees for entering BiH are further regulated by the Code on Conditions and Procedures for the Entry and Stay of Foreigners ("Sluzbeni glasnik BiH", no. 4/05).

The Code on Conditions and Procedures for Issuing Visas to Foreigners, Extension and Annulment of Visas, Types of Visas and Records of Visas Issued from November 8th, 2004 regulates in more detail the questions of issuing (extending) visas, types of visas, form and content of the visa sticker, as well as other issues important for issuing visas. On November 9th, 2004, the Instruction for the Procedure of Issuing Visas in the Diplomatic-Consular Departments of BiH was adopted. The aim of regulating the procedure of processing visa applications in the above-mentioned way was the establishment of a stricter criteria for entering BiH for citizens of countries with high migration, as well as prevention of illegal immigration and harmonization of the way these areas are approached with countries of the Schengen Agreement.

Foreigners entering BiH must hold a valid passport and visa, unless it is not otherwise stipulated by the international agreement or the decision of the Council of Ministers of BiH. Also, foreigners must hold documents which are related to the reasons and conditions of their stay and be able to provide evidence of means of supporting themselves and a guarantee for repatriation.

Following the suggestion of the Ministry for Foreign Affairs the Council of Ministers brings the decision on states whose citizens are exempted from the obligation of having a visa on entering BiH. They can stay in BiH up to 90 days. The Council of Ministers is also responsible for exempting individuals from the obligation of having visas whose refugee status has been recognized by other countries.

BiH is still in the process of harmonizing its policy with the visa policy of the European Union. Concerning the visa applications, BiH visa policy has classified it in three parts, from A to C. Group A comprises the countries with which BiH has

the most liberal visa policy, and group C comprises countries with a high migration risk (mostly African and Asian countries). With the latter, a strict visa regime is instituted.

Bosnia and Herzegovina has started the process of full harmonization of its own visa policy with the policy of the EU. This harmonization is in part conditioned and limited by BiH's own national interests, which means that BiH does not necessarily have to reach complete harmonization with the EU's visa policy before it starts accession negotiations.

a) Types of visas

An important step on the road to the harmonization of BiH legislature with EU legislature in visa policy is the preparation of the new Law on Changes and Supplements to the Law on the Movement and Stay of Foreigners and Asylum. The new law stipulates the introduction of Schengen visas with the use of letters: A (airport transit visa), B (transit visa), C (short stay visa) and D (country visa for long stays). In this way the types and categories of visas would fully comply with the EU's *acquis*.

An airport transit visa (visa A) will be issued to foreigners who during their uninterrupted flight do not leave the transit area of the airport, in cases when the Council of Ministers of BiH exclusively decides that citizens of certain countries need to hold airport transit visas.

Transit visa (visa B) will be issued for one, two or in exceptional cases, more transits. The total time of stay on the territory of BiH during one transit journey cannot be more than five days, and transit visa will be issued only in case the foreigner gives the evidence that he/she will be admitted in the country he/she is entering from BiH.

Short stay visa (visa C) will be issued for one or more entries into the country proviso that none of the uninterrupted stays or the total of several consecutive stays in BiH exceeds 90 days in the period of six months starting from the first day. Short term visas are issued for tourist, business, personal and other types of traveling.

Country visa for long stay (visa D) is issued for one or more entries and enables the foreigner an uninterrupted stay on the territory of BiH for six months within the period of one year, starting from the date of the first entry. A long stay visa is issued for a period that does not exceed one year. The special legal act plans in greater detail the criteria for issuing long term visas.

b) The procedure for issuing visas

Visas for entering BiH are issued by BiH DCD abroad for one or more entries in BiH and in exceptional circumstances visas can be issued by the BiH State Border Service (on the recommendation of the Ministry for Foreign Affairs of

BiH). Visas that allow multiple entries in BiH are not to exceed one year, and the single stay cannot be longer than 90 days.

Before issuing the visa, an inspection is performed by the BiH Ministry of Interior whether the applicant is on the list of individuals who are expelled from BiH, whose stay has been terminated or denied entrance in BiH. The introduction of electronic data analysis has shortened the procedure of issuing visas to two days. The system is installed in DCD and the stickers are printed. The data is submitted to the Ministry for Foreign Affairs for control. DCDs are informed of the procedure and can supervise this activity. Also, certain bodies within the BiH State Border Service have access to the data base of issued visas. Issued visas have an area which can be read manually.

Addendums further clarify the conditions and procedures for issuing (extending) visas, types of visas, form and content of the visa sticker, as well as other issues relevant for the issuing of the visas.

The Directions for procedure of issuing visas in the BiH diplomatic-consular departments regulate the procedure of processing visa applications and the way applications are processed in BiH diplomatic-consular departments.

Foreign citizens applying for visas need to fill in the form "Application for issuing visas to foreign citizens". The application is submitted in person and in advance to BiH DCD. The applicant should provide a photo, passport, and proof of a paid fee together with the documentation required for a certain type of visa.

The authorized person at the DCD, according to the rules of BiH MFA and international practice, checks whether the passport for which the visa is requested is regular and valid, if the required documents are submitted and appropriate and if there exists any legal impediment for issuing visas. "Regular passports" mean that they are not damaged, contains all the numbered pages, that data and information are clear, without smudges or traces of erased data, that the photograph is clearly of the person holding the passport, and if there were any changes in the passport which confirms that the corrections were done by the authorities and that they are regularly stamped and signed. When a "valid passport" is in question it means that it has been issued by the official body, that it allows the person to return to the country that issued it or allows the person to enter the third country, and the validity period is at least 90 days longer than the visa validity period.

The letter of guarantee which was sent by the BiH citizen or a foreigner that has a granted permanent or temporary stay in BiH must be verified by the organizational unit of the Ministry of Interior, or an authorized body. Business invitation has to be verified by the organizational unit of the Ministry of Interior or the authorized chamber of commerce according to the seat of the invitee.

General medical insurance does not exist for foreigners. A foreigner can be insured only against accidents. BiH does not issue health travel insurance. Instead of that, evidence is needed for having 150.000 a day which is considered enough for covering possible medical costs. There is no insurance company which deals

with medical insurance on the state level, since the medical system is on the level of entities.

Article 7, Directions for procedures of issuing visas, stipulates that when the application is submitted an interview must be conducted with the applicant. It further states that the primary goal of conducting the interview with the applicant is the fight against illegal migrations. Diplomatic-consular departments bear the full responsibility in judging whether there is a risk of immigration. Detail assessment of the validity of the submitted documentation and responses given during the interview serve to discover those applicants who want to immigrate to the country using a tourist visit, study, business or family visit as a reason.

If there is a doubt in the authenticity of the submitted documents, i.e. if the applicant did not submit strong enough evidence that he/she will return to the country of residence, and the diplomatic-consular department can deny him/her a visa.

Rejected applications are kept separately because they can be used as a basis for an interview if the same person applied again but with an invitation from a different person or company. It would be useful to keep a separate file of the persons or companies which appear more often on guarantees and invitations; and in case of suspicion notify the headquarters.

c) Denial of visa application

According to the Article 10, procedures for issuing visas, a foreign citizen will not be granted a visa:

- if he/she in his application did not submit documentation required for the type of visa being asked;
- if he/she, according to the information submitted to the DCD, has been convicted of a felony;
- if there is a decision of expelling or banning a person from entering BiH, through the duration of that decision;
- if he/she asks for a transit visa and does not have entry visa for the neighboring country when it is needed;
- if he/she does not have the proof of inoculation and comes from a territory where there is an epidemic of a contagious disease and for which, according to the decision of the authorities, proof of inoculation is needed for travel;
- to the person which has been convicted of a war crime or other crimes against humanity and international law;
- if it is in the security interests of BiH;
- if an authorized person in BiH DCD after the interview and controls determines that there are no justifiable reasons for issuing a visa.

The decision to decline the visa application is conveyed to the applicant verbally. The decision is not explained and is not subject to a law suit.

d) Annulment, canceling and shortening of the visa validity period

A visa is annulled if it is established that the visa was not issued according to the current law. A visa is annulled by the authorized Board by stamping the passport with “annulled” on the visa sticker. If the State Border Service finds, during the checking procedure, that the visa is falsified, they are obliged to annul the visa momentarily. The decision to annul the visa is not subject to law suit.

A visa is canceled:

- when a foreigner does not respect the constitutional order and regulations of BiH, its entities and Brcko District, or engages in action which threatens the constitutional system and security in BiH, or when the foreigner is a member of an organization which is involved in such activities;
- when a foreigner threatens the state interests of BiH with criminal actions;
- when a foreigner organizes illegal entry, stay and leaving of BiH for individuals or groups, or participates in human trafficking;
- when a foreigner breaks or attempts to break the rules of crossing the BiH state border;
- when the circumstances under which a visa was issued have changed to the extent that it denies any possibility for the issue of the visa;
- when a foreigner intentionally provides false data important in order to obtain a visa;
- when a foreigner performs activities which require a work permit and he/she does not have one;
- when the presence of a foreigner presents a danger for public peace and the national security of BiH.

The State Border Service is authorized to cancel a visa on the border crossing only in case it has been proven that the visa has been falsified. In other cases, even when the officer of DCD suspects the person carrying the visa has other motives for entering countries apart from the ones stated on the visa, DCD is not authorized to cancel the visa on the border crossing but it can start the procedure for canceling the visa in the BiH MFA.

Systems

CIPS (Citizen Identification and Protection System) is a computer program which was initiated by the Office of the High Representative (OHR) in BiH. It relies on a network of data transmission covering the territory of the country and consisting of central data bases of administrative and civilian nature.

This modern, highly efficient network is organized on a three-level structure (local-entity, Brcko District-state, level) and on the principle of distribution is controlled from the Network Operation Center (NOC) established on the level of the Ministry in Sarajevo, where the data is gathered.

The central component — a visa electronic system server, is in the Ministry of Civil Affairs. CIPS is an independent administrative organization within the Ministry of Civil Affairs. The server is physically situated in CIPS, although all inspections are performed by the Ministry of Interior. In the server are located both the central data base of visas and visa applications. Within CIPS there is a back up system.

The system can be browsed using the name, surname, passport number and the number on the visa sticker. Stickers are printed and have a zone which can be read auto-matically. It is technically impossible to print a visa before authorization is received, following consultations with the Ministry of Interior. All information about declined visa applications are also entered in the system. Personal data of an individual are available to all DCDs. For the time being, the system of electronic issuing of visas can be used only until 17h CET. The intention is to develop a system that can be operational in the evening and over the weekend.

Within CIPS there is a possibility of introducing the Central Register of Foreigners and biometric data base. Regarding the access to the data bases and entering the data, the procedure of issuing visas regulates that the system of the electronic issue of visas can be operated only by persons for which DCD has secured a filled SGT form.

The operation system works in the way that one person (the consular official) has the right to enter data on visa applications in the system, inspect submitted visa applications and print visa stickers. The chief of the consular department has access to processed visas and approves the issue of each individual visa application (“Decision”), and has the access to issued visas.

In order to access the system the authorized officer has a password and he/she is obliged to make sure that no one comes into possession of it, because only that person is responsible for entering data under that password. In case that the incorrect password is typed in three times, the system shuts down automatically.

After data entry is finished, pressing the command “Record” automatically forward the application to the Ministry of Interior for inspection.

Strategy/priorities of BiH

Within the project “establishment of legal, regulatory and institutional frameworks in areas of asylum, migration and visa issues matching the EU norms” in the CARDS Regional Program 2002/2003, which was implemented under the general coordination of the Swedish Migration Board (SMB), a Visa Module — Report on Bosnia and Herzegovina was done.

The Report contains recommendations, strategies and plans of implementation. As a working document, the Report is a means and instruction for improving the visa system in BiH according to the EU — Schengen standards.

Starting from the recommendations, strategies and plans of the implementation specified in the Report and in cooperation with the experts from BiH and the International Center for Migration Policy Development (ICMPD), the following priorities were set up:

- establishment of a legal and institutional framework, and technical and administrative capacity building services and persons within the ministries which participate in carrying out the visa regime;
- signing the agreement on readmission between BiH and countries of the EU, as well as other countries;
- further strengthening and empowering of the State Border Service with a goal of more efficient state control in carrying out the visa regime;
- harmonization of procedures of issuing visas with EU regulations;
- synchronization of the visa regime with the visa regime of EU member states and signatories of the Schengen Agreement;
- participation in expert teams for the development of the Information System on Migrations (ISM);
- training of officers in cooperation with the IOM on the basis of the CARDS program.

Intensifying cooperation with neighboring countries and countries in the region, coordinating the activities on liberalizing the visa regime towards the countries of the Western Balkans and establishing a joint approach towards the EU and member states on issues of common interest in the areas of visa policy remains a firm commitment of BiH.

VISA POLICY OR VISA POLITICS?

by

*Julie Woloshin*¹

Former Finnish President Martti Ahtisaari argued in the run-up to the 2003 Thessaloniki Summit that a clear “signal of Europe’s commitment to the [Western Balkans] would be if the European Union would ease and then lift the visa regime, as it did with Croatia.”² At the time, the EU had a policy to fully engage in the region, and secure stability by offering EU perspective. The liberalizing of the visa regime was presented as a prize to be won, if continued stability and reforms were made to bring Justice and Home Affairs standards in line with those of the EU.

Using its stick — carrot policy, the EU reaffirmed at Thessaloniki the long term goal of EU perspective, and when ready, promised visa liberalization, in return for stability and a step closer towards European standards. However security threats rocked two of Europe’s capitals, London and later Paris, in 2005, and now Europe’s Ministers of Interiors are promoting their agendas and moving away from the EU’s policy towards ensuring stability within the region through sustained reforms.

The visa policy towards the Western Balkans is increasingly becoming a means for politicians to guard the internal security of their own countries, while endangering the progress made and their past investments in the region. If the politicians of the EU shift from using the visa policy for its intended purposes, and rather to a game of ‘visa politics’ to suppress the fears of instability within their own frontiers, the move towards a restrictive ‘Fortress Europe’, will jeopardize the continuation of the reform path by countries whose legitimacies will be questioned.

¹ The author is Foreign Policy Analyst/ Foreign Consultant to the Secretariat for European Affairs, Government of the Republic of Macedonia.

² Comment by former Finnish President Martti Ahtisaari (Crisis Group) “Give Balkan nations their proper place in Europe”, *International Herald Tribune*, 21 June 2003. Available at <http://www.crisisgroup.org/home/index.cfm?id=2236&l=1>.

Visa Free to Visa Fee

Through the implementation of the Schengen Treaty in 1995 and the creation of a common visa policy³ the EU shifted its borders eastward and redefined its list of friends by introducing the Schengen Black List.⁴ Although socialist Yugoslavia had profited from a visa free regime with Europe, many of its newly-independent democratic states were not so fortunate. Listed among the ‘condemned,’ were the ex-Yugoslav republics of Bosnia and Herzegovina, the Federal Republic of Yugoslavia (Serbia & Montenegro), and the Republic of Macedonia, alongside an Albania that had since broken free from its Communist isolation under Enver Hoxha. Croatia and Slovenia continued to travel visa-free to the EU. At a period when the political systems were deteriorating, the countries of the EU modified their visa policy towards the region to shelter their countries from the potential flood of illegal immigration and criminals seeking to profit from the weak structures. By 1995, with the Schengen treaty implemented, the member states reaffirmed their common position.

The visa serves as a screen, through which consular staff can identify potential immigration risks to member states, either as criminals or illegal immigrants. The 2001 “Schengen Visa Black list” defined the criteria for determining which countries whose nationals would require a visa to enter the EU as “illegal immigration, public policy and security, and the EU’s external relations with third countries, with consideration also being given to the implications of regional coherence and reciprocity.”⁵ However, the visa requirement makes a clear statement to the political relations between countries: the visa is the dividing line between being a friend and an enemy.⁶

After the events of 11 September 2001 and 11 March 2004, the EU addressed the growing need for security by developing its Hague Programme⁷ in late 2004, aimed at bringing a closer co-operation in Justice and Home Affairs between member states.⁸ The existing visa policy has been developed under Hague, and involves all stages of immigration, with respect to the root causes of migration, entry and admission policies and integration and return policies.”⁹ Its corresponding Action plan lays out the priorities the EU has placed on these issues: security — the fight

³ See Common Visa Policy, http://www.europarl.eu.int/comparl/libe/elsj/zoom_in/11_en.htm.

⁴ Council Decision 2317/95 of 25 September 1995.

⁵ Council (EC) no. 539/2001, Schengen Visa Black list.

⁶ Interview with Sergio Carrera, Brussels, 6 July 2005.

⁷ The Hague Programme is a combination of the conclusions of the previous Tampere programme with similar objectives, ambitions of the European Constitution, and public concerns.

⁸ The European Commission consulted the public on future guidelines for the new programme on the establishment of an area for freedom, security, and justice, http://europa.eu.int/comm/justice_home/news/consulting_public/tampere_ii/news_tampereii_en.htm

⁹ See Annex I, the Hague Programme: Strengthening Freedom, Security and Justice in the European Union, point 1.5 of the Presidency Conclusion of the Brussels European Council.

against terrorism, organised crime and illegal immigration.¹⁰ With a visa policy deeply set in restrictive security measures, the EU led by its national politicians are exchanging a realistic visa policy with that of a populist one.

The JHA Council resolutions¹¹ of 27–28 April 2006 reinforced the EU's focus given to security within the Schengen-zone. The vote to increase the visa fee, from 35 to 60 euros, was “a consequence of the implementation of the Visa Information System and the collection of biometric data from visa applicants.”¹² Few groups will receive visa fee waivers,¹³ and if the Council opens negotiations on visa facilitation with a country will the increase be delayed for only a year.¹⁴ Although promising, the process until the facilitated visa regime goes into effect, if passed, will be measured.

The EU's Insecurities

After the tragedies of the July London bombings and the riots outside of Paris in late 2005, coupled with the disasters of 11 September and 11 March, politicians are compelled to address public fears of insecurity. Preservation of security has topped national agendas as member states have experienced instability within their frontiers, further endorsing their leaders' commitment towards restrictive measures, including a tightening visa policy. “If fears are fostered by politicians, this stresses the need to have a frontier and justifies the use of visa,” to serve as a method to enhance security.¹⁵ Increased document security with biometric identifiers and information databases are exchanging fears for a false sense of security. Such measures towards protection give the impression that if the normal flow of people

¹⁰ The Action plan includes: fundamental rights and citizenship — creating fully-fledged policies; the fight against terrorism-working towards a global response; a common asylum area — establishing an effective harmonised procedure in accordance with the Union's values and humanitarian tradition; migration management — defining a balanced approach; integration-maximising the positive impact of migration on our society and economy; internal borders, external borders and visas- developing an integrated management of external borders for a safer Union; privacy and security in sharing information — striking the right balance; organised crime — developing a strategic concept. Balzacq, Thierry and Sergio Carrera, *Migration, Borders and Asylum: Trends and Vulnerabilities in EU Policy*, CEPS 2005 p. 6.

¹¹ Council (EC) 8402/06 (Presse 106) Available at: <http://ue.eu.int/ueDocs/newsWord/en/jha/89 81.doc>.

¹² The use of biometric identifiers in the Schengen visa and the development of Visa Information System and Schengen Information System II are methods in which the EU is trying to prevent the unwanted entry of criminals and other illegal immigrants.

¹³ The following groups will benefit from a visa fee waiver: children under 6 years old; school pupils, students, post-graduate students and accompanying teachers who undertake trips for the purpose of study or educational training; and researchers from third countries travelling within the Community for the purpose of carrying out scientific research as defined in the Recommendation (No. 2005/761/EC) of the European Parliament and of the Council of 28 September 2005.

¹⁴ Until 1st January 2008, this Decision will not affect the visa fees for third countries in respect of which the Council has given the Commission, by 1st January 2007, a mandate to negotiate a visa facilitation agreement.

¹⁵ Interview with Sergio Carrera, Brussels, 6 July 2005.

is denied entry to the EU due to a tightened visa policy, then criminals, illegal immigrants, and drugs will equally be averted.

“‘Over-securitarianism’ does not guarantee safety, but does it block normal people?”¹⁶ Visas are increasingly used to address security fears about organized criminals and terrorists by blocking virtually all, including legitimate, entry.¹⁷ Those who believe that a restrictive visa regime ensures the systematic control and regulation of entry by citizens of countries known to violate immigration laws ignore the side effects of restrictive visa policies that include illegal immigration and corruption.¹⁸ Therefore, the visa used for its intended purpose, to evaluate potential immigration risks is effective; a visa intended to eliminate all illegal entryway into the Schengen-zone will not prevent serious offenders, the real security threats, from entering, but only manage to further isolate those who apply for legitimate entry into the EU.

Organised criminal networks are not suppressed by strict visa regimes, but in fact profit from their complexity. It is not logical for sophisticated criminal networks and individuals whose direct objective is to violate immigration laws to apply for visas; instead they bypass the visa process, using pre-existing channels into their country of destination. If the difficulty of legal entry into the EU increases for the average citizen (complexity of visa application process, increased visa fees, stricter criteria), so do the opportunities and returns for those who profit from counterfeiting.

Instead, clear benchmarks towards a liberalised visa regime would promote legitimate travel to the EU, as the citizens would have something to lose from illegal immigration — their right to travel visa-free to the EU; the status quo permits those who benefit from illegitimate travel to further profit. The measured liberalization of the visa regime with a country striving to achieve EU standards, would not lead to a flood of its citizens illegally residing within the EU, but instead would promote the legitimacy of the country’s own passports, border control, etc, by squeezing out those who benefit from its black list status.

With security high on the agenda in the EU, discussion on the Commission’s proposed visa facilitation rests on the mercy of those member states whose politicians preach restriction. The EU institutions in Brussels are currently driving hard to keep the issues on the table, but its member states see a different picture of the visa issue, raising unfounded fears of mass illegal immigration that further destabilise member states. If member states’ own internal security situations are intertwined with false ideals of protection by biometric identifiers, high-tech

¹⁶ Interview with Joanna Apap, Brussels, 23 July 2005.

¹⁷ Crisis Group, *EU Visas and the Western Balkans*, p. 2.

¹⁸ The Stefan Batory foundation conducted anonymous surveys in March 2004 among visa applicants in Polish consulates in Belarus, Russia, and Ukraine and drafted this report from their findings. *Monitoring of Polish Visa Policy Report*, Stefan Batory Foundation, November 2004, p. 10.

databases, increased security, their attention may be diverted from where it should be. After all, even the walled fortress around the ancient city of Troy was breached.

The EU's Visa Liberalisation Experience

The EU stated its awareness of the importance the people and governments in the Western Balkans attach to the perspective of liberalisation of the visa regime, but any progress in that direction depends on the implementation by those countries of major reforms in areas of rule of law, combating organised crime, strengthening of administrative capacity in border control and security of documents.

The Commission's second visa black list, released in 2001, transferred Bulgaria and Romania from the visa requirement to the visa-free list after the assessment of their progress of reforms.¹⁹ At the time, both countries had already been negotiating chapters of the Accession negotiations, but more importantly, the political climate within the EU was on a drive for expansion and 11 September had not yet taken place. As the Commission screened the two countries, the following measures were influential to the removal of the visa regime:

- The introduction of sophisticated, biometrically secure passports, national ids, And resident cards which were difficult to forge;
- The introduction of criminal sanctions and fines for irregular border crossing And forged documents, along with legislation making it a criminal offence to Violate the immigration law of any EU member state;
- Alignment of the visa policy with that of the EU;
- Deployment of more staff and equipment at the borders
- Conclusion of agreements for the repatriation of illegal residents in the EU.²⁰

The Macedonian Perspective

The January 2006 Commission's Communication, "The Western Balkans on the Road to the EU: consolidating stability and raising prosperity,"²¹ opened the doors on visa facilitation to the region after nearly three years past since the commitments at Thessaloniki and a failed attempt on regional visa facilitation under the Luxembourg Presidency in 2005. Fresh from the successful candidacy bid to EU membership in December 2005, Macedonia was the first country in the region to begin such talks on 28 March 2006. While Macedonia welcomed this and every step closer to the EU, negotiators maintained a firm position that would strive for visa facilitation negotiations alongside parallel visa liberalisation negotiations; an attempt to ensure that the facilitation would not serve as a

¹⁹ Council (EC) 539/2001 of 15 March 2001.

²⁰ COM(2001), 61 final; Brussels 02. 02. 2001; COM(2001)261 final; 29. 06. 2001.

²¹ COM(2006), 26 final; Brussels 27. 01. 2006.

substitute to previously made commitments for a future visa liberalisation. On 4 May 2006, the Commission agreed to propose a draft negotiating mandate to the Council to begin negotiations on visa facilitation with Macedonia, along side negotiations for a Community readmission agreement. Although the atmosphere in member states across Europe is not yet ripe for visa liberalisation, the Commission's statement on Macedonia specified that "visa facilitation is a first, transitional step on towards visa liberalisation,"²² the first mention of visa liberalisation in Brussels since 2004.

Understanding the delicacy of the EU's security concerns, but also driven to achieving the goal of visa free travel to the EU for its citizens, Macedonia has remained committed to its reform process. Experts from the Ministries of Foreign Affairs and Interior and the Secretariat for European Affairs met with their Bulgarian counterparts to fully learn from Bulgarians' move off the "Schengen black list." The citizens of Macedonia themselves are no security threat to the EU Member States,²³ but the government is working to prevent illegal immigration through improving the control of its borders, detection of criminals, and overall security. By the end of June 2006, Macedonia will have concluded bilateral readmission agreements with 18 of 25 EU MS.²⁴

Reforms are underway in the field of JHA to meet *Schengen acquis* and Macedonia is actively working to implement the latest technologies in integrated border management, working closely with experts from the Stability Pact. New biometric passports will be issued later this year, as will the improvement of the visa sticker for foreigners. The government has prepared a plan for harmonisation of the visa regime, and currently the visa regime has been temporarily lifted for the new member states until June 2006, with the exception of Poland, Estonia and Czech Republic, for which the Republic of Macedonia has permanently abolished the visa regime.²⁵

As security issues top national agendas throughout Europe, its leaders should tread carefully while developing a policy prescription to remedy their internal security issues. A restrictive visa regime as a solution for fears of insecurity will not only serve as a bandage on a broken bone, but will easily reignite past fears if not successful. A symbol of assured commitment in the region that would recognise

²² "The Commission Recommends to Negotiate Visa Facilitation Agreement with FYROM" 4 May 2006, Available at: <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/06/570&format=HTML&aged=0&language=EN&guiLanguage=en>.

²³ The country's 2 million population makes up 0,22% of that of the EU's 462 million. The latest statistics on deportees show that only a fraction of a percent of the population have been deported from EU MS for in 2005 (0,03% or 577 people).

²⁴ As of 10 May 2006 Macedonia has signed bilateral readmission agreements with Austria, Germany, Hungary, France, Italy, Poland, Slovenia, Slovakia and Spain. Readmission agreements with Belgium, Luxembourg and Netherlands will be concluded by the end of May 2006, while agreements with Denmark and Sweden will be concluded by the end of June 2006. Estonia, Ireland, Lithuania, and the UK expressed that the agreements were not necessary with Macedonia.

²⁵ These countries have waived the visa fees for holders of Macedonian passports.

reforms in JHA with clear benchmark towards the liberalization of the visa regime would reconfirm the EU's priority in the region as well as the region's future in the EU, while promoting legitimate, but accessible, travel to the EU.

To support such efforts, Macedonia and the other countries of the Western Balkans must stay dedicated to achieving the reforms achieved by Bulgaria and Romania, to ease the EU's reservations over the facilitation and liberalization of the visa regime, which to the detriment of their citizens, has been deemed the filter of instability to their own countries.

INITIATIVE FOR THE FACILITATION OF THE VISA REGIME FOR STUDENTS

by

Mihajlo Babin¹

The Student Union of Serbia (SUS), as a single student organization operating at the national level, has been continually dedicated to involving Serbian students in higher education reform within Europe. Also, the SUS has contributed plenty to the initiation of higher education reforms in Serbia while entering the ESIB, an umbrella organization for national student unions in Europe. Apart from educational reform, the SUS has participated in numerous activities and has conducted surveys of the student population. Of particular importance was a survey conducted in 2004 among the students of four universities in Belgrade, Novi Sad, Kragujevac and Niš.

The overall results of this survey revealed considerable amounts of xenophobia, and national and religious intolerance. The most compelling result was that over 70% of students have never left Serbia proper. Of note is that these results are yielded only from the student population, the segment of society that ought to travel the most. If the national population of young people were to be surveyed the results would be even more dismal, although they are already very discouraging. Logically, the complicated application procedure, inhuman queuing, and frustrations that accompany obtaining a visa are the foremost factors contributing to the low amount of students who have traveled. Today's generation has come of age during the introduction of visas, and consequently travel possibilities have been extremely limited.

What is necessary to do in order to get visa? We must:

- Supply numerous documents and certificates,
- Wait in queues to deliver the documents,

¹ The author is member of the Student Union of Serbia.

- Translate documents and pay the accompanying fees,
- Pay the fee for the visa itself,
- Wait for the embassy to grant or refuse the visa application. It is therefore necessary to plan the trip far in advance.

It must be emphasized that the number of required documents varies from embassy to embassy, and that the approach of embassies changes with alternation of ambassadors. This inconsistency means that among potential travelers, it is widely regarded that one country's embassy will issue a visa easily while it is impossible in another.

The SUS formed a team of seven students, in cooperation with Balkan Trust for Democracy, responsible for the practical elements of the visa regime facilitation. In September 2004, the team visited European institutions in Brussels and was hosted by the European Commissioner Mr. Janez Potočnik. Many of our interlocutors expressed their support for the initiative, but the prevalent position was that the conditions for the 'white Schengen list' are very strict and that individual initiative counted for little. One of the points we emphasized was that young people have become frustrated by the memories of their parents, who could freely travel virtually anywhere and for any length of time. At the beginning of the 21st century it is difficult to understand and accept that parents have had better living conditions than their children. It is important to remember that the former Yugoslavia was a communist and not a democratic country, however its citizens could travel without limitation.

In Brussels, delegates also stressed that visas are not the primary obstacle working against young travelers, but the poor material situation in Serbia is largely to blame. Our team presented a number of arguments that refuted these statements, particularly since many young people and their parents would set aside the necessary funds if they were entitled to travel freely.

Especially important was the visit to the European Commissioner Mr. Olli Rehn who was impressed. This positive impression was mentioned again during his visit to the University of Novi Sad in October 2005.

It is contradictory that the visa situation was much more favourable during the 1990's than after the democratic changes in 2000. Of course, this fact is an excellent argument for those detractors who proclaim that Serbia is globally despised and that we cannot determine our own political reality.

One of the biggest hindrances to reform in Serbia is raising apathy among youth, best reflected by the low turnout during elections. If we think a little bit further, why would young men and women fight for change if they have not had a chance to experience the contrast of another country's system? Many young people believe nothing can be done and if something could be accomplished, it wouldn't bring drastic improvement to their lives.

My friends who have had the possibility to travel return each time with renewed energy, an appetite for change, and the desire for a better quality of life in

Serbia. My high school friend who, during the 1990's believed in the official stance of our statesmen, is a very good example. A few years ago, after a short visit to Sarajevo where he witnessed the consequences of the war, he revised his dogmatic attitude, became more objective, and understood that there is always another side to the story.

If young people could travel they would see that a popular brand-name pair of sneakers is twice as expensive in Serbia than in London. This is not unusual. One of the few means for a young person to feel connected to Europe and the world is to buy brand-name clothes. This reflex is partially a response to the isolation of the 1990s, but it is very well employed by salespeople in Serbia to boost their bottom line.

During the 1990's many Serbian citizens who went abroad never returned. Those who remained expected that democratic changes would mean that they would be able to freely travel in and out of the country. Visa queues would be a thing of the past. However, little has changed in the way that visas are applied for and issued. Without a doubt our administration is responsible for their inaction regarding legal reforms and the implementation of conditions necessary for Serbia to achieve 'white Schengen list' status. Ending the fifteen-year long isolation should be a priority, and the one that is discussed much more.

Rightfully we ask: are the students at fault for their prejudice, or is it the system that is changing slowly and reluctantly? It is also important to question how students, as the most prospective stratum of society, would be able to understand European integration and implement European Union standards if they never experienced of these first-hand?

Currently, obtaining visas for students is easier since fewer documents are requested, and the most important one is the Certificate of Student Status. Still, genuine visa facilitation does not exist and traveling is impossible for a majority of students. The key problem is the lack of freedom of movement: the spontaneity of attending a concert, festival or event in Vienna, Prague, or Budapest is not an experience afforded to Serbian students. It is not paramount to actively practice freedom, sometimes mere possession of it is enough.

IV — INTEGRATED BORDER MANAGEMENT AND EU STANDARDS

SOME RECOMMENDATIONS FOR WESTERN BALKAN COUNTRIES: THE BULGARIAN EXPERIENCE IN VISA POLICY AND BORDER CONTROL

by

*Nadya Dimitrova*¹

In early 1997 Bulgaria was on the verge of bankruptcy and in a deep political crisis. The country was as far away as possible from being given the status of a candidate for membership in the EU and had been on the EU/and at that time Schengen/ Negative Visa List since 1995. In May 1997 a new UDF Government headed by Ivan Kostov came to power. Two and a half years later/December 1999/ Bulgaria was given the status of a candidate country and in yet another year on 1 December 2000 Justice and Home Affairs Council reached a political agreement on the Commission's proposal for a regulation determining the list of third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement. According to this agreement, which confirmed the Commission's proposal, Bulgaria was placed in the positive list and Bulgarian nationals benefited from the visa exemption from the date of entry into force of the regulation.

Two months later the Commission submitted a report to the JHA Council, describing the measures taken by Bulgaria to curb illegal migration and illegal residence by persons from the country in the member States and for repatriation of those persons.

The measures taken by Bulgaria within the period 1997–2000 comprised legislative and institutional changes, which had the aim to convince the EU Member States that the country no longer produced illegal migration and had established *efficient border control* based on the European standards.

¹ Author works with the European Institute, Sofia, and Representative the ICMPD to Bulgaria.

Border control

Legislative measures and administrative practice

- The *Ministry of Interior Act* and the *Regulation on its implementation*, describing and regulating the functions, structure and authority of the Border Police within the Ministry of Interior;

The institutional development and structural reform of the National border Police Service (NBPS) began with the adoption of the Ministry of the Interior Act (MIA) on December 9th, 1997. Despite its subordination to the Ministry of Interior, the Border police/troops/ at that time had a Soviet type military organisation which could not cope with newly arising problems like trans-border crime and increasing migration-pressure. Within a little more than two years the NSBP established itself as a specialised Police Border Guard and search unit within the Ministry of the Interior.

By virtue of the *Ministry of Interior Act* and the *Regulation on its implementation*, the National Border Police Service took the responsibility for the surveillance of the “green” and “blue” borders.

- The *Penal Code* defining as criminal offences the illegal crossing of borders, trafficking in humans, document-related crimes, and other related offences;
- The *Foreign Nationals Act* establishing the terms and conditions, and the procedure, under which aliens may enter, stay, and leave the Republic of Bulgaria, as well as their rights and obligations.

Under the Act a foreign national could enter Bulgaria legally only at the determined border checkpoints (Article 17) and on condition that he had a valid travel document and, if necessary, a visa (Article 8). The issuance of visas at the border was no longer possible.

Under Article 10 Par. 1, the issuing of visa and entering the country was refused to a foreigner when he was known to be involved in trafficking in human beings and bringing illegally persons into and from the country.

- The *Regulation on the Implementation of The Foreign Nationals Act* providing detailed terms, conditions, and procedures, under which aliens may enter, stay, and leave the Republic of Bulgaria;

Under the *Foreign Nationals Act* and the *Regulation of Border Checkpoints*, only individuals who were in possession of valid foreign travel document and were not subject to lawfully imposed restrictions or prohibitions could cross the country's borders and only at the border checkpoints that had been established expressly for that purpose.

- The *Bulgarian Identity Documents Act*, providing the terms, conditions, and procedure for the issue and use of Bulgarian identity documents by Bulgarian citizens and foreign nationals.

The Act defined the reasons that served as legal grounds to prohibit travel outside the country of individuals who had committed criminal offences and of persons who were considered a threat to national security. The law also provided for the imposition of a restrictive measure whereby Bulgarian nationals who had

violated the law of a foreign country, or had been expelled from such a country, might have been prohibited to travel outside of Bulgaria for a period of one year.

Security of documents for Bulgarian nationals

The Law introduced, as of 1 April 1999, new types of ordinary passports, diplomatic passports and seaman's passports. These three types of passports incorporated a number of security features against counterfeiting and forgery (e.g.: the personal data, the digital colour photograph and the digital holder's signature are laser printed in the Visual Inspection Zone of the personalised page; the personalised page is laminated with thin transparent overlay incorporating Optically Variable Devices).

According to the law, the deadline for the passport replacement was 31 December 2000. From that date on, Bulgarian nationals would be allowed to travel abroad only if they were in possession of the new type of passports.

Bulgarian diplomatic and consular missions could only issue temporary passports to Bulgarian nationals abroad who were not in possession of a valid passport (e. g. were not yet in possession of the new passport or had a passport which had expired). Applications for new passports were forwarded via the Ministry of Foreign Affairs to the National Police Service in Sofia.

In the case of loss or theft of a passport, the holder had to submit a written declaration to the nearest District Police Office (or to the respective diplomatic or consular mission).

The new types of passport were issued by the National Police Service (Identity Documents Department in Sofia or regional offices). The Ministry of the Interior developed strict rules and procedures for the handling of blank passports and forms used in the process of issuing new passports. A specially designed Information System permitted tracking the flow of documents and consumables from the point of production (supply) to the final product (new document).

Those passports for which a written declaration of loss or theft had been submitted to the responsible authority were declared invalid via the Bulgarian Identity Document Issuance Information System. The data concerning invalidated passports was made available on-line at every border checkpoint. The system also stored information on previous losses so it was possible to see if 'regular' losses were made thus detecting suspicious incidents.

Security of documents for non-Bulgarians

Travel documents for refugees and stateless persons incorporated the same security features as the passport for Bulgarian nationals.

- The *Council of Ministers Decree? 213/15. 05. 1997* on the adoption of the *Regulation of Border Checkpoints* defining the organisation, operation, and management of the border checkpoints and the interaction between the authorities who perform controlling functions at such checkpoints.

The Regulation also provided for an Interdepartmental Council on Border Checkpoints;

In February 1998, the Bulgarian Government adopted a Programme for Combating Illegal Migration and Illegal Residence by Foreign Nationals which provided the framework for action in this area. Nine ministries were involved in the implementation of this programme. An Interdepartmental Council on the Border Checkpoints was established. The Council was chaired by the Chief Secretary of the Ministry of Interior. This Government Program was based on the main provisions of the Council Recommendation of 22 December 1995 on harmonising means of combating illegal immigration and illegal employment and improving the relevant means of control.

The following controls were introduced by the competent authorities at border checkpoints: passport, motor vehicle, customs, sanitary, veterinary, and phytosanitary.

Ever since the Border Police authorities have been exercising mandatory passport and visa control at the border of all individuals who enter, leave or transit through the country. The border control system registers all crossings of individuals and vehicles. The Ministry of Interior has established an automated border control information system. This system contains data about wanted persons, vehicles, and objects, about individuals who are banned from entering or leaving the country, as well as other categories of information similar to the information stored in the Schengen Information System. Automated workstations with direct access to the information system databases were set up at all the border checkpoints. The Visa Centre with the Ministry of Foreign Affairs sends the information about all issued visas and rejected visa applications to all border checkpoints. This information is used to check the validity of the visas of all individuals who cross the borders. Additional controls were in place for the citizens of high-risk countries.

The Civil Registration Act entered into force on July 31, 1999. It provided the terms and procedure under which all natural persons should register themselves in the Republic of Bulgaria. Its provisions covered all Bulgarian citizens, the aliens who were legally admitted for permanent residence, as well as stateless persons who had settled on a long-term basis and predominantly in Bulgaria and have been granted refugee status.

In the Ministry of Interior centralised database was established, which functioned as an integrated information system and included: a register of the population, a register of aliens and refugees who were permanent or long-term residents, a register of ID documents (passports, ID cards, driving licenses, alien and refugee documents for permanent and long-term residence), a register of motor vehicles, a register of stolen vehicles (Bulgarian or wanted by Interpol), a register of stolen or missing identity documents, of invalid foreign documents, of prohibitions to enter or leave the country, of administrative sanctions for violations of the passport and visa regime, of wanted persons (including those wanted by

Interpol), a register of issued visas and rejected visa applications, a register of individuals with a criminal record, information about travel of Bulgarian nationals and vehicles abroad and about travel of foreign nationals and vehicles through Bulgaria. The population register included digitised photographs of every person and their signatures which were accessible by computer.

- *The Council of Ministers Decree? 70/27. 03. 1998 adopting the Rules of Structure and Operation of the Interdepartmental Council on Border Checkpoints;*
- *The Council of Ministers Decree? 35/25. 02. 1999 adopts Regulation on the Terms and Procedure for Issuing Visas by the Diplomatic and Consular Missions of the Republic of Bulgaria.*

Requirements and conditions for crossing the border

Sanctions concerning the illegal crossing of the border

Penal Code: pursuant to Article 279 a person who enters or crosses the state border without permission of the respective authorities, or with permission but not through the border checkpoints, shall be punished by deprivation of liberty for up to five years and a fine

Sanctions concerning false and forged documents

Penal Code: Article 308 of the Penal Code sanctions the production and use of false and forged documents with “deprivation of liberty for up to 5 years”.

Foreign Nationals Act: pursuant to Article 80, Para.1, Item 2 in relation with Article 10, Para. 1, Item 7, when a foreign national attempts to enter or transit the Republic of Bulgaria using false or forged documents, the Minister of the Interior can issue an order depriving him/her of the right to stay in the country.

Sanctions concerning illegal emigration to the Member States

Bulgarian Identity Documents Act: under Article 76 a ban on leaving the country for a one-year period was imposed on Bulgarian nationals who had violated the immigration law of another country or had been expelled from another country.

Sanctions concerning the facilitation of illegal immigration/emigration

Penal Code: pursuant to Article 280 a person who takes another person across the state border without permission of the respective authorities, or with permission but not through the border checkpoints, shall be punished by deprivation of liberty for up to six years and a fine of up to one million Lev.

Foreign Nationals Act: Article 51 regulated the administrative and criminal liability of carriers’ officials, while tour operators were subject to liability sanctions. Failure to comply with their duties as stipulated in the FNA resulted in the official’s

punishment with a fine of up to 5,000 Lev and the legal entity is imposed a liability sanction of up to 6,000 Lev.

Legislative steps have continued with the amendments of the above mentioned laws and by-laws.

Strict enforcement of existing legal obligations have always been of utmost importance.

The Bulgarian police authorities have to continue their efforts with a view of ensuring the enforcement of all legal obligations imposed on tour operators. For this purpose, they would meet their need of information via an intensification of their contacts with the Member States in the framework of police co-operation.

Border Police Staff

The total number of staff employed by the National Border Police Service (NBPS) as of 18 October 2000 was 8,751, of whom 4,707 were professional officers and 4,044 military conscripts. The replacement of conscripts by professional police officers was to be completed and was completed in March 2002.

The staff of the NSBP was slowly but steadily shifting from a military-type organisation towards the establishment of an independent and highly professional body for border policing. The shift was initiated by the Council of the Ministers Decree Nr. 59/01 and 60/012 and — as a first step — included the reduction of the number of conscripts and a slight rise in the number of policemen. As a next step — again aiming at reducing the number of conscripts and increasing the number of policemen — the transformation was supposed to be finished by the end of March 2002 with a further increase of the staff of the NSBP by 2100 policemen.

Administrative structures

In view of ensuring effective enforcement of legislation in the field of border control and migration, the National Border Police Service (NBPS) placed special emphasis on the establishment of appropriate administrative potential of managing structures and professionally trained police officers equipped with the essential modern technical devices.

The NBPS updated its 2005 Concept and Development Plan in view of complete adoption and implementation of European standards and practices in the field of border control.

Regional border units were carrying out accelerated personnel recruitment and technical renovation. The first transformation was ordained by Government Decree in June 1999 resulting in the appointment of 600 commissioned and non-commissioned officers in the place of 1000 military conscripts. The second stage of that process was planned for 2001 and another 2000 military conscripts were replaced by 1300 professional police officers. The updated Development Plan

foresaw the final demilitarization of the service (replacement of military conscripts with full-time police staff) to be completed by the end of 2002.

A new specialized unit for combating illegal trafficking in women for the purpose of sexual exploitation was created with the NBPS. The unit was subordinated to the Outdoor Surveillance Department and its basic functions and tasks included to:

- Perform overall examination and investigation of the existing organizations dealing with illegal trafficking across Bulgarian state borders ;
- Find out the modus operandi of illegal channels;
- Find out organizers and performers and their interrelations;
- Carry out joint actions and exchange information with other competent services;
- Exchange intelligence and cooperate with relevant foreign police.

A specialized unit /sector for combating trans-border networks dealing with illegal migration and trafficking in human beings was also set up with the National Service for Combating Organized Crime. The main task of this unit was to co-ordinate outdoor surveillance at a national level and directly to cooperate with the police authorities of other countries. Among the tasks assigned to this unit were drawing up of situation reports and risk assessments, as well as strengthening cooperation and interaction with the National Border Police Service in the field of trans-border trafficking in human beings and trafficking in women and children with the purpose of sexual exploitation.

Training

The Centre for specialisation and professional training of National Border Police staff was opened in Pazardjik in October 2000 in implementation of a PHARE Twinning Project with Germany in order to create the appropriate structure for an efficient and specialist training of border police.

It employed 149 trainers delivering four core courses:

- Initial police training (Criminal Law, Criminal Procedure Law, Police Law, EU Law, Psychology, Border Police Training, etc.)
- specialised police training;
- tailor-made courses for border police officers (border police at checkpoints, border guard police, border police at river and maritime border);
- foreign language training.

In addition to core training, the Centre offered senior management courses and training of trainers in: the following subjects: European integration—EU Law; Schengen Information System; visas and the visa regime of Bulgaria; transborder crime; human rights; refugee law and asylum; technical equipment for checking of travel documents and border surveillance; and the Border Control Automated Information System.

A PHARE twinning programme was implemented jointly with Germany to further develop the training courses. The programme was completed by the end of 2001 and provided all border control officers with the knowledge and skills to work to EU standards and rules.

Technical equipment at the borders

The attainment of the EU requirements and standards regarding the technical equipment at border checkpoints was supported by additional investments under PHARE projects, from the national budget, the National PHARE Programme and other donors. The technical facilities at border checkpoints were aimed at enhancing the effectiveness of the control activities and reducing border-crossing time. A specialised laboratory and a database of false, forged and counterfeit documents was planned to be set up by 2004.

In 2001, the green border was controlled by means of eight Bulgarian infra-red mobile systems MUSON and SNOG; border police duty patrols were equipped with 236 portable night vision devices. Access in the vicinity of the green border is controlled by an alarm system that is fully functional on a 350-km perimeter (the border with Turkey is covered on its total length).

The Border Control Automated Information System, which included 222 computerised working stations at the border checkpoints, allowed the registration of all persons crossing the border. Since October 2000, an Automated Fingerprint Identification System (AFIS) has become operational. The computer workstations were installed at the main border checkpoints.

Ten border checkpoints (Varna, Burgas, Malko Turnovo, Kulata, Vidin, Ruse, Kapitan Andreevo, Sofia Airport, Gyueshevo, and Kalotina) employ DOCUBOX secondary control devices.

Under Phare 1999 and Phare 2000, the Commission invested EUR 16,5 million for the purchase of communication equipment and vehicles to be put into operation at the Black Sea blue border and the green border with Turkey.

Border Police authorities at the border checkpoints were currently upgrading the equipment for primary and secondary document control by installing modern document analysis machines.

Depending on the type of border traffic and the assessment of risk levels, the border checkpoints are equipped to detect illegal immigrants concealed in vehicles as well as prohibited and restricted goods.

The Bulgarian authorities had to continue to modernise and extend their equipment at the borders. In particular it was planned to purchase three VSCs modern computerised systems for secondary control of documents.

Border co-operation with neighbouring countries

Bulgaria's border co-operation was at that time based on existing bilateral agreements with Greece, Romania, Turkey, the Federal Republic of Yugoslavia and Macedonia.

Repatriation of illegal residents to Bulgaria: existing readmission agreements and drafts on readmission agreements with nearly all the EU member States

Visa policy

Bulgaria was engaged in a process of aligning its visa policy with the EC acquis.

The issuing of visas is regulated under the *Foreign Nationals Act and the Regulation on the Terms and Procedures for Issuing Visas by the Diplomatic and Consular Missions of the Republic of Bulgaria*.

By 2001 Bulgaria had, to a great extent, brought its visa policy into compliance with *Council Regulation (EC) No 574/1999 of 12 March 1999* (which adopted the visa list of the repealed Regulation 2317/95) *determining the third countries whose nationals must be in possession of visas when crossing the external borders of the Member States*. Bulgaria had adopted unilaterally a visa-free regime for individuals carrying ordinary passports who were citizens of the Member States of the European Union and the European Free Trade Association, the United States, Canada, Japan, Israel, New Zealand, and Australia holders of ordinary travel documents. Bulgaria also maintained a visa-free regime under bilateral agreements with the Czech Republic, Poland, Slovenia, Slovakia, Hungary, Croatia, Lithuania, South Korea, Russia, Ukraine, Georgia, Romania, San Marino, Tunisia, FYROM, and FR of Yugoslavia.

In 1999, Bulgaria introduced a visa requirement for the citizens of Cuba and Bosnia-Herzegovina, and in 2000 for the citizens of Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan and Turkmenistan. Following a decision in December 2000, Bulgaria had also initiated procedures for introducing the visa requirement for the citizens of Georgia, Russia, Ukraine and Tunisia.

Based on *Government Decision of December 2000*, a procedure had already started for the termination of the visa-free agreements with Georgia (from 19. 12. 2000), the Russian Federation (from 12. 12. 2000), Ukraine (from 13. 12. 2000) and Tunisia, in accordance with the revocation mechanism laid down in the agreements (within 6 months' unilateral notice for the first three countries and 30 days' notice for Tunisia). The Bulgarian negative visa list was therefore largely harmonised with the corresponding EU/Schengen list. At that time the only difference between the two lists was that Bulgaria continued to maintain on a bilateral basis visa-free regimes with Macedonia and the FRY. To the Commission it was explained that these were neighbouring countries with ethnic Bulgarian minorities and with whom Bulgaria maintained close economic ties.

Under the *Regulation on the Terms and Procedures for Issuing Visas by the Diplomatic and Consular Missions of the Republic of Bulgaria* 62 countries were considered as high-risk countries from the point of view of illegal immigration. The citizens of those countries were required to comply with additional requirements for obtaining Bulgarian visas. These requirements included proof of the purpose of

the visit, availability of sufficient funds or ticket to prove intent to return, availability of sufficient funds for supporting, a monetary guarantee by the inviting party, etc.

In compliance with *Regulation 574/99/EEC of 12 March 1999* and *Regulation 1683/95/EEC of 29 May 1995*, Bulgaria introduced from June 2001 a visa requirement for the citizens of Tunisia, Georgia, Ukraine and the Russian Federation.

Bulgaria will end its bilateral visa-free agreements, not compliant with the *acquis*, before accession and will fully introduce *acquis* compliant airport transit visas (ATVs).

The new *Bulgarian Identity Documents Act and the Regulation on the Terms and Procedure for Issuing Visas by the Diplomatic and Consular Missions of the Republic of Bulgaria* are in compliance with *Regulation 1683/95 of the EU Council of May 29, 1995 laying down a uniform format for visas*. Under Bulgarian law visas are in the form of stickers which are placed in a foreign travel passport or other valid document which entitles the bearer to cross the border. The only exception which is not in full compliance with the *acquis* is that the transit permits which are issued to Turkish citizens who are permanent residents of EU Member States or are in possession of visas to visit such states are different from the other type of Bulgarian visas due to the use of a different sticker. The new Bulgarian visa sticker complies in full with the format that was established by *ISO 7810* and contains all data and the protective measures that are required under the EU Council Resolution. Use of the new Bulgarian visa sticker started in the beginning of 2001.

Visas were issued by the Bulgarian diplomatic and consular representations. As of 31 December 2000, the Ministry of Foreign Affairs Visa Centre was connected with 60 Bulgarian representations. Links to the remaining 20 were under preparation. Under this on-line link, every visa application was transmitted to the Visa Centre which, after consulting the database of the Ministry of the Interior, granted or refused the visa. This Visa Centre was also connected with every border checkpoint.

All visa applications were handled through the visa section of the Ministry of Foreign Affairs (established 1996). The centre was connected online to Bulgarian consulates to increase efficiency. This also helped combat corruption, as people issuing visas were unknown to those applying for them. The people working at the centre had sole responsibility for issuing visas in Bulgaria, although consular officials wrote comments and recommendations. In 2000 they 208, 000 visa applications were handled. In response to this workload new staff was employed from 2001.

Administrative structures

The Visa Center established at the Ministry of Foreign Affairs, which issued visa permissions, has electronic connection to the Bulgarian diplomatic missions abroad and to all border checkpoints. An interdepartmental information exchange

system controlling the entry of foreign nationals in Bulgaria has been developed. The system aligns the Bulgarian national standards to those of the Schengen Agreement member states. It has been set up in close cooperation with experts from the member states. In view of securing an institutional guarantee for a positive effect, the introduction of standards has been promoted by the adoption of secondary legislation establishing an additional statutory basis in the field of extradition as well as of secondary legislation regulating the status of consular officials.

In the Ministry of Foreign Affairs a computer system for visa control based on specially designed software is operational. It is based on an existing on-line connection between the Visa Centre at the Ministry of Foreign Affairs and the Bulgarian diplomatic missions abroad on the one hand, and between the Visa Centre and the Bulgarian border checkpoints on the other. Within the network, information about every visa that has been issued goes automatically into the database accessed by the Bulgarian border checkpoints and by the National Border Police Service. This ensures protection to every Bulgarian visa that has been issued, i.e. the border control authorities check not only the validity of a Bulgarian visa, but also the presence of its holder into the database of persons who have been granted visas.

Information campaigns

Information for Bulgarian nationals

The Bulgarian authorities were aware of the necessity of informing their nationals precisely on the forthcoming visa free regime. Shortly after the decision of 1 December 2000, it was explained by the authorities what visa free travelling to the EU would mean and above all what it would NOT mean. However, in order to prevent unjustified expectations, they conducted another information campaign before the entry into force of the new visa regulation.

Information for tour operators

It was decided to establish regular working contacts for exchange of information between the Directorate International Co-operation of the Ministry of the Interior, the Bulgarian Tour Operators Association (BTOA) and the consular services of the Member States. These contacts addressed in particular the consequences of the new visa free regime.

Conclusions

Bulgaria made significant efforts to address most of the EU requirements in the above discussed areas. The speedy introduction of new passports with high levels of document security and the new computer systems for issuing of passports and visas systems were examples of Bulgaria's efforts, as well as, the development of the Border Police Service since its creation in 1997. As regards the repatriation of

illegal immigrants, Bulgaria concluded re-admission agreements with all the Member States .

As a result since March 2001 Bulgarian nationals have no longer been required a visa to travel to EU Member States. This effect was achieved not only because of legal and administrative reforms undertaken by the Bulgarian authorities but mainly because of the enormous political will and determination, which led to the speedy and appropriate political decisions .It is worth noting the political consensus reached among all the institutions and their concerted efforts in the rapid adoption of all necessary legislation. Political leaders played an important role through their regular meetings with EU counterparts by providing information about the continuous efforts and results achieved by Bulgaria.

Recommendations to Western Balkan Countries

The experience of Bulgaria coming off the EU Negative Visa List, could provide some key strategies for most of the Western Balkan countries.

However, WB countries should not be grouped and regarded as a 'package' because the countries of the region are different in terms of their preparedness for EU accession, reflecting each country's track record. Each of them has nation specific problems. At the same time, it is very clear that visa policy, which is part of justice, freedom and security area, will have regional dimension as well.

The Western Balkans is a particular challenge for the EU. Enlargement policy needs to demonstrate its power of transformation in a region where states are not marked by stability and societies are divided. A convincing political perspective for eventual integration into the EU is crucial to keep their reforms on track. But it is equally clear that these countries can join only once they have met the criteria in full. This will be more than necessary as regards *justice, freedom and security* where it will be expected that responsibilities are shared. An example could be given with the integrated border control, which in most of the countries is still in preparation. Different visa regimes operate in the different countries. As regards migration, the readmission agreements have to be fully enforced.

Although some of the countries are not yet EU candidate countries and some are, all of the countries should put efforts to implement and convince the EU Member States they are implementing certain reforms.

Here are some general recommendations for all the countries:

- unilateral abolition of visas for citizens of the European Union;
- strengthening controls on all borders through efficient development and implementation of Integrated Border Control/Management with support and guidance of the EU experts;
- establishing joint patrols along shared borders with some of the neighbouring countries like Romania, Bulgaria, Greece, Italy etc.;

- signing readmission agreements with EU, which will increase trust and confidence towards the WB countries;
- improving the quality of all identity documents;
- introducing new/if not existent/criminal offences related to migration;
- harmonizing the legislation with the *acquis*;

making concerted political efforts to achieve the removal of the countries from the Visa Negative List.

The removal of WB countries from the Visa Negative List might appear difficult and not very close today to some of the countries. In the medium terms, however, the efforts towards real reforms, effective border control could enhance the growth of confidence in each of the countries and could make their removal from the EU Visa Negative List less serious concern.

MODERNIZING THE EU VISA SERVICE: AN ALBANIAN PERSPECTIVE

by

*Albjon Bogdani*¹

Context

The commitment of the EU to welcome the Western Balkans into an enlarged common European space is vital for the ongoing political, socio-economic, and cultural transformations taking place in the region. The recent initiative to liberalize and facilitate the EU visa regime has given a new momentum to the processes of integration by enhancing the freedom of movement for people from the Western Balkans. The considerable investment in integrated border management and the serious reforms undertaken by countries in the region is paying off as the greater majority is partly unburdened from the previously highly restrictive visa regime responding to the danger posed by criminal minorities in the region.

As the report of the International Crisis Group on EU visas and the Western Balkans points out, it is of utmost importance that the EU recognizes that an unwarranted tight visa regime could lead to a ghettoization of the region by “fostering resentment, inhibiting progress on trade, business, education and more open civil societies”.² Similar concerns are also echoed in the report *The Balkans in Europe’s Future* by the International Commission on the Balkans, which advocates the need for EU investments in the development of “smart borders” that increase freedom of movement for citizens in the region through a “smart visa” approach.³ Recently the Commission warned that European-minded people from potential EU candidate countries in the region remain marginalized and isolated,

¹ The author is currently associate professor in the Departments of economics and political science at the University of New York Tirana.

² International Crisis Group (2005) *EU Visas and the Western Balkans* (Europe Report N°168 — 29 November 2005).

³ International Commission on the Balkans (2005) *The Balkans in Europe’s Future*.

especially when compared to the greater freedom of movement enjoyed by citizens of countries such as the Russia Federation, Ukraine, and China as well.⁴

This paper is animated by an anthropological take on the issue of the visa application process and is mainly concerned with the improvement of visa services offered by consular offices and embassies of EU member states operating in the Western Balkans. While focusing on Albanian experiences of obtaining Schengen visas, the paper offers different perspectives on low-cost investments that would considerably improve the present visa regime in the region as a whole. The following considerations assume that while total freedom of movement within the common European space can only be considered a long-term goal for Western Balkans countries, there exist ample opportunities for governments in the region and EU member states to cooperate on developing a framework for progressive visa liberalization.⁵

In this context, the paper explores a range of shortcomings of the current management of consular services and proposes possible venues for improving the quality of visa issuance system. In particular, the paper is concerned with the operationalization of the recent initiatives for a selective liberalization and facilitation of the EU visa regime for the Western Balkans.

IT Development for Improved Information Dissemination and Interactivity

One of the most efficient improvements that can be achieved at very little cost relates to the utilization of the internet to distribute and update information concerning requirements and procedures of obtaining visas, as well as interacting with visa applicants. The development of an online infrastructure would be one of the best ways to operationalize the idea of selective visa liberalization and facilitation given that categories benefiting from the recent engagement of EU to promote a more progressive visa regime are generally IT literate.

The research carried out in order to assess the quality of the online consular services of EU member countries revealed that accessing relevant information on the web is quite onerous and online interactivity is minimal.⁶ With only the Italian and British embassy links showing up as first links, other consular services maintaining

⁴ International Commission on the Balkans (2006) *Rome Declaration* (9 May, Europe Day 2006). <http://www.balkan-commission.org/activities/n-7.htm>.

⁵ As it was recognized at the MARRI Regional Forum organized in Tirana last year, “while full visa liberalization for the whole region for travel to the EU and Schengen countries remains the primary aim, it is recognized that some of our countries this is a medium or long-term perspective, depending on major reforms in areas such as the strengthening of the rule of law, combating organized crime, corruption and illegal migration, and strengthening their administrative capacity in border control and security documents”. See MARRI Regional Forum (2005) *Declaration* (Tirana, 5 April 2005).

⁶ While the website of the Albanian Ministry of Foreign Affairs (<http://www.mfa.gov.al>) provides a comprehensive list of foreign consulates and embassies it lacks any information on their respective official websites. In this context, the “google approach” was the research methodology followed in order to obtain information on online consular services of EU member countries operating in Albania.

official websites could be reached only by rummaging around through several google-result pages and navigating on average four intermediate hyperlinks.

Another important part of the online research consisted in the evaluation of the information provided in each of the existing websites. The premium online service is provided by the UK and following the lead is the Italian website. In particular, these sites offer not only detailed information on all visa requirements and procedures, but also offer the possibility for online scheduling of visa appointments and provide ample information on venues for feedback and filing grievances.⁷ Official websites of other countries lag behind considerably, especially the Greek one given the fact that it serves a relatively large pool of visa applications. In fact the Greek portal stands in stark contrast to the Italian and British websites, providing only basic contact information and visa requirements. Additionally the Greek online consular services undermine principles of privacy and raise security concerns because lists of scheduled appointments contain not only names of individuals but also their passport numbers.⁸

In this context, the development of an online information infrastructure offers an effective way of promoting visa facilitation through improved distribution of information and more diverse forms of communication and interaction for Albanian citizens applying for visas. In particular, the modernization of consular services of EU member countries offered in Albania require the creation and maintenance of official websites offering comprehensive information on visa requirements, links for feedback on services provided, detailed information on complaint procedures, and online scheduling of appointments.⁹ This modernization of the visa application process would immediately benefit the categories targeted by the recent initiative for EU visa liberalization and facilitation because they generally possess the relevant IT skills and knowledge. Advantages of online consular services include reduced overall time and money spent on obtaining relevant information and obtaining visas for Albanian citizens, as well as more efficient visa issuance systems for foreign consulates and embassies.

Developing Incentives for Better Services through Feedback

The report of International Crisis Group *EU Visas and the Western Balkans* hits the mark when it problematizes visa issuing systems of EU member countries as

⁷ The best practice is by far that of the UK embassy (<http://www.britishembassy.gov.uk>) which provides detailed stipulations on consular policies for handling complaints and other concerns. The official website of the Italian Embassy in Tirana (<http://www.ambitalia-tirana.com>) offers extensive information on consular services offered, but requires updating (e.g. the phone contact information was incorrect). Currently only the online portal of the Italian Consulate in Shkodra (www.consitalia-scutari.org) offers the possibility for online booking of visa appointments.

⁸ While conducting online research on May 13, 2006, it was possible to access full names and passport numbers of more than 230 Albanian citizens through the appointment lists posted on the Greek embassy website (<http://www.greekembassy.al>).

⁹ Note that according to the website of the Royal Netherlands Embassy in Tirana (http://www.mfa.nl/tir-en/the_embassy) visa applications can be submitted only by appointment!

animated by some type of “consular sadism”.¹⁰ While it would be unfair to overgeneralize, it is in place to note that to a large extent Albanian visa applicants bear an unwarranted heavy prejudice from clerks serving at foreign consulates and embassies throughout the country. More specifically, the strong negative presumption towards visa claims from Albanian citizens and the lack of proper communications skills from consular staff has led to unjustifiable attitudes and actions from their part — ranging from mildly insulting to outright rude and abusive behavior.

In particular, based on in-depth interviews and regular reports from the media, the poor and uncivilized consular services of the Greek embassy in Tirana are a significant source of frustration and resentment among honest citizens who want to travel abroad. The bad manners of the Greek consular staff seem to cause dissatisfaction in other parts of the Western Balkans also. Risto Karajkov mentions the example of a Taiwanese journalist who initiated a campaign to shame the Greek embassy in Skopje after the frustrating and humiliating experience of being verbally assaulted and having his passport thrown on the floor by a furious clerk.¹¹

Part of the reason behind the distorted faces of consular staff, humiliating interviews and the overall poor treatment of visa applicants at counters of foreign consulates and embassies can be found in the lack of a functioning framework addressing complaints and grievances. The lack of effective feedback channels and systematic redressing of abuses has had two salient implications. First, it has led to persisting discrimination against citizens from the Western Balkans who want to travel through the Schengen zone. Second, it has undercut mechanisms for enhancing consular services and improving upon the meager PR conducted by consulates and embassies as reflected by widespread public discontent and skepticism towards particular EU member countries.

The development of efficient procedures for redressing citizens’ grievances and the establishment of effective feedback channels would go a long way in tackling these problematic aspects of foreign consular services. A first step in this direction would be the specification of a proviso which obligates consulates and embassies to provide written explanations for rejected or denied visa applications. Yet another step would be that of making an efficient use of feedback by visa applicants on the quality of the service provided by individual members of the consular staff with the goal of making these job positions more competitive.¹² The existence of effective feedback would act as a deterrent for the personnel serving at consular counters who

¹⁰ International Crisis Group (2005) p. 26.

¹¹ Risto Karajkov (2006) *The European Union and the Balkans: Disparities in the Freedom of Movement*, <http://www.worlpress.org/Europe/2219.cfm>. According to the article, the anger of the Greek consular staff member had been provoked because “the man had the nerve to ask for a visa on short notice”.

¹² At this point it is important to note that much of the abusive practices describe the attitudes and behavior of both foreign staff members and local people employed in foreign consulates and embassies. Interviews conducted during the research revealed that many visa applicants show particular reservations for working practices of Albanian members of the consular staff.

all too easily overstep their authority and qualifications due to the lack of proper disciplinary measures for abusive practices. Another possible venue advocated by the Citizen's Pact for South East Europe is that of introducing an ombudsman for visa issues in order to address human rights issues related to the visa application process. In particular, the Citizen's Pact proposes that the task of the ombudsman would involve the monitoring of practices of consular services of EU countries throughout the Western Balkans and those on the external borders of the EU, as well as receiving grievances and claims for systematic abuses.¹³

Visa Liberalization and Relevant Training for Consular Staff

The recent commitment of the EU for the liberalization of the visa regime for particular categories of applicants (such as students, researchers and university professors, business people and civil society activists) has received a warm welcoming throughout the Western Balkans. However, public skepticism and uncertainty lingers due the long history of discrimination of consulates and embassies of EU member countries against citizens from the region. An important dimension of this long history of discrimination is the negative conditioning of the consular staff throughout the region with a strong presumption against visa claims from applicants from the Balkans.¹⁴

In order to operationalize the engagement for the liberalization and facilitation of the visa issuance system, a training initiative is much needed in order to educate and guide consular staff through the successful implementation of the new visa regime. Countering the practices of "consular sadism" will require the training of officials working in consulates and embassies in processing visa applications with the relevant flexibility and professionalism.¹⁵ Additionally, trainings for the consular staff should focus on the improvement of communication skills, development of working attitudes and practices respectful of basic human dignity, as well as the understanding of the risks of discrimination involved. The importance of a training initiative of consular officials should not be underestimated because as Karajkov correctly points out, "everything that diplomacy is trying to build could be easily undone by the

¹³ Citizen's Pact for South East Europe (2003) *Liberalization of Visa Regime in South Eastern Europe: Obstacles and Opportunities*, p. 34 (<http://citizenspact.org.yu>).

¹⁴ Indeed very recently the Greek embassy rejected the visa application of the President of the Albanian Youth Parliament who had received an invitation to represent Albanian young people in an international event taking place in Greece.

¹⁵ See Risto Karajkov, p. 1. The new EU policy approach on visa liberalization requires new approaches to the handling of visa applications so that pathetic cases of visa denials such as that of the "Goce Delcev" folkdance ensemble from Macedonia from the British embassy in Skopje do not occur again. According the article, the group of 45 artists who had been invited to the prestigious Llangollen folk festival in Wales had been asked by the consular clerk to perform a dance in order to ascertain the validity of visa applications. In the end, several members of the ensemble had been denied visas perhaps because, as Karajkov poignantly remarks, "they just didn't meet the clerk's artistic standards".

actions of a single immigration official”.¹⁶ Hence, the current engagement of the EU to liberalize and facilitate the visa regime for the Western Balkans can only be taken seriously if coupled with the much needed investment in the human capital for the development of an efficient and courteous consular service.

Consular Facilities and Human Resources Management

Crowded embassy entrances are quite a familiar site in Albania and elsewhere in the region — with many citizens applying for visas queuing even the night before the interview day. It is certainly a disturbing sight to see a whole crowd under the rain or else burning sun waiting for hours on end to enter the air-conditioned consular spaces. For one thing, the visa application process ends up as a prolonged unpleasant experience because of the lack of even the minimum conditions of the physical infrastructure of foreign consulates and embassies. The latter lack such basic and low-cost facilities such as shades to shelter awaiting people from weather whims, benches to have people seat given the considerably long time that the visa application process takes, and even a ticketing system which make the waiting period more customer-friendly. In this context, small investments in the physical facilities of consulates or embassies would significantly improve the quality of the visa services offered by EU member countries.¹⁷

The problem of overcrowding can be alleviated to a great extent by the development of an online scheduling system for visa appointments, the introduction of a drop-box system,¹⁸ as well as the issuance of longer stay visas. Yet another efficient way of tackling this issue would consist in a better management of human resources available, including the extension of working hours and the deployment of more personnel servicing at counters of consulates and embassies throughout the country. Perhaps the more acute cases are those of Greek and Italian consular services which server a persistent high number of visa applicants.¹⁹ Immediate positive outcomes resulting from such investments aiming at the modernization of the work of diplomatic-consular missions would be a simpler, faster, and more humane visa application process.

Reducing the Costs of the Visa Process

One of the freshest news around is that Schengen visas are scheduled to be raised as of January 1st 2007, from €35 to €60. According to EU Justice and

¹⁶ Risto Karajkov, *ibid*.

¹⁷ These problems are particularly striking in the cases of the Greek and Italian consular facilities given the large number of visa applicants that they serve.

¹⁸ The Drop Box System has been successfully used by the British Embassy in Tirana. For more information visit <http://www.britishembassy.gov.uk>.

¹⁹ To put things into perspective, the average waiting period for a visa appointment at the Italian Embassy in Tirana is one month.

Internal Affairs Commissioner Franco Frattini, the increase of the visa fee is necessary to finance the newly introduced biometric data system.²⁰ Needless to say these proposals send out a mixed message for citizens throughout the Western Balkan countries as the visa process is already too costly and present a considerable financial burden. In the context of the progressive steps undertaken in liberalizing the visa regime and enhancing the effective freedom of movement of people from the region, the EU should exempt citizens from the Western Balkans from the price increase akin to the treatment of citizens from Ukraine and Russia.²¹

In addition, there are several other venues for to enhance consular services while also lowering the overall costs of the visa application process. As the study by Citizen's Pact for South East Europe points out, while countries party to the Schengen Agreement have settled for minimum documentation requirements, individual consulates and embassies can and do complicate the process to a large extent.²² In this context, EU member states should consider the possibility for harmonizing their policies towards documentation required from visa applicants given that they offer the same basic service (e.g. entrance into the Schengen area). This would efficiently lower the costs of the application process which currently ranges anywhere from €40 to €120 due the large pile of documents that need to accompany a visa application.²³ According to the International Crisis Group report, Macedonians alone spend approximately €10 million for obtaining visas (close to one-third of the assistance allotted to Macedonia under the CARDS program for 2005).²⁴

Yet another approach towards making liberalizing consular services while lowering the costs incurred by applicants would be the issuance of longer-stay and multiple-entry visas based on a good visa record. It should be noted that costs involved include not only those for the application process but also additional expenditures such as travel costs.²⁵ The utilization of credit history in delivering visas would also have other positive effects such as a smaller number people applying for visas each year, a reduction of the average time of the process of visa application, and an increased overall efficiency of the current visa issuing systems. Lastly, another effective way for lowering visa expenses relates to the development of an interactive IT infrastructure for consular service previously discussed. The exemption of the Western Balkans from the proposed fee rises for Schengen visas and the streamlining of visa procedures (fewer required documentation and issuance

²⁰ B92 (2006) *EU Approves Visa Price Hikes*, 28 April 2006 (<http://www.b92.net>). Also see Aleksandar Mitic *Open Schengen* (Transitions Online, 6 April 2006) <http://www.tol.cz>.

²¹ "Not 60 Euros" is part of the campaign organized by Citizen's Pact for South East Europe against the increased visa fees for EU countries. Check <http://citizenspact.org.yu/not60.htm> for more information and how to get involved.

²² Citizen's Pact for South East Europe, p. 48.

²³ International Crisis Group, p. 9.

²⁴ International Crisis Group, *ibid*.

²⁵ For instance, one-year valid visas generally allotted to students studying abroad mean that in order to finish a four-year program one has to travel at least eight times back and forth for visa renewals.

of longer-stay multiple-entry visas) are crucial for the liberalization of the EU visa regime. Easy access to the common European space requires affordable visas.

Concluding Remarks and Recommendations

The quality of consular services provided by EU member countries in Albania has been characterized by inefficient information dissemination, low interactivity, high financial costs, lengthy processing time, poor serving facilities, and insufficient and poorly trained human resources long conditioned with a negative presumption of Albanian visa applicants. And much of this is true for EU visa issuing systems in the region of the Western Balkans as whole. This has meant both poor services offered for citizens who want to travel through the EU and recurring cases of discrimination or even outright abuse. Importantly, the poor service provided has also lead to ethical and political costs for EU member countries which suffer public dissatisfaction because of the poor PR of consular officials.

The following recommendations to EU member states aim at modernizing the current EU visa services and at facilitating the process of visa liberalization for the Western Balkans:

- Developing a modern IT infrastructure for improved dissemination of information and interactivity through the construction and maintenance of official websites;
- Developing a feedback system for complaints or other input by visa applicants in order to systematically address grievances and provide incentives for better services;
- Training consular staff on the recent EU engagement for visa liberalization and facilitation in order to reverse the previous negative presumption for visa applicants;
- Reducing the overall costs of the visa application by streamlining visa applications and exempting citizens from Western Balkans from the costs of the new biometric data system;
- Investing in the physical infrastructure of consular facilities serving visa applicants and improving human resources management by deploying more staff as needed.

The Albanian perspective offered in this paper points to low-cost investments which would significantly alter the current visa regime in the country and which could also be implemented on a regional level as well. The commitment of the EU to liberalize and facilitate the visa issuing system for the Western Balkans should translate into concrete steps which aim at the enhancement of the quality of the service provided. The implementation of the discussed proposals along with an effective public awareness campaign would go a long way in making the visa process faster, cheaper, fairer, more civilized, and friendlier for the future European citizens.

EU STANDARDS IN MIGRATION POLICY, VISAS AND THE CURRENT SITUATION IN THE WESTERN BALKANS

by

Gordana Ilić-Gasmi¹

Introductory remarks

The Schengen Agreement² (1985) presents the idea of the free movement of people, but also a fear of immigration and cross border crime. The Schengen Agreement was followed by the Convention on its application (1990) which came into power in 1995. Those are the basics of a “Schengen *Acquis*” which is today an integral part of the *Acquis Communautaire* and, of course, much richer in regulations, with many soft laws, e.g. recommendation on European standards in migration policy, the right to enter, stay and return of foreigners, as well as issues of preventing illegal migrations and protection of personal data which are addressed to EU member states.

The Convention on the Application of the Schengen Agreement established the Executive Committee with the goal to regulate normatively the provisions from the Schengen Agreement and to control their application. Besides that, the Convention further regulates issues of eradicating control on internal borders of members of the Schengen Agreement and the basis upon which foreigners may enter: all persons who are not citizens the European Community.

Concrete implications for third country citizens, those countries which are not members of the Schengen Agreement, mean that the rejection of a visa application

¹ Senior lecturer at the University Singidunum, Belgrade, National legal advisor to the International Organization on Migrations for Serbia and Montenegro and special advisor to the Director of SCG European Integration Office.

² It was signed by the Benelux countries (Holland, Belgium and Luxemburg), FR Germany and France which make up five original members and the number of countries grew later. The Schengen Agreement first implied gradual suspension of control on common borders. See: “Sporazum iz Sengena — Za Evropu bez granica”, ed. D. Lopandic and M. Janjevic, 1996, Belgrade, p. 225.

for one country of the Schengen automatically eliminates the possibility of obtaining a visa in another member country.

The Treaty of Maastricht (1993) in its provision 100c introduces the common visa lists and a unique visa form for the members of the EU. In this way, issues connected with the visa regime (list of third countries which need visas) are moved to the jurisdiction of the European Community, i.e. the first pillar of supranational decision making, unlike other judiciary and internal affairs issues which make up the third pillar of intergovernmental cooperation of EU member states.³

The Treaty of Amsterdam (1999), which is a revision of the Treaty of Maastricht, brings novelties — besides “communalizing” the area of visas, such as more jurisdiction of EU bodies (Commission, Council of Ministers and the European Parliament), a step toward integration, the Schengen *Acquis* was integrated in the EU Treaty. This is particularly important, because at the signing of the Schengen Agreement, it was not a part of the *Acquis*: it was not legally and formally connected with EU law because it was not signed by all EC members.

Further evolution in the EU: the Treaty of Amsterdam proclaims the creation of an area of freedom, security and justice, which was further confirmed with the Treaty of Nice (2003).

The White Schengen list and the freedom of movement in the EU

One of the four liberties which are the basis of the EU is the freedom of movement of people in the EU — the most visible right of citizens (according to the latest data, around seven million people lives in other EU member states).

However, freedom of movement, as a precondition for the successful functioning of the EU single market, does not apply to citizens of the third countries, who are subject to the control of travel documents, and in many cases the need for having a visa to enter the EU. Nevertheless, the visa does not guarantee the automatic right to enter the EU and does not cancel the foreigner’s obligation to report their presence when he/she enters the Schengen space. This reinforces the thesis of a the security concept of the visa regime, which is not so obvious at first glance. More precisely, one of the key reasons for introducing visa requirements in the EU is exactly the fight against organized crime and illegal migration flows, as well as the degree of internal security.

The freedom of movement for the citizens of EU is continually evolving in a positive direction. The new EU Directive on Freedom of Movement for EU Citizens within the EU (April 2004) is based on the concept of EU citizenship and facilitates the administrative procedure within the EU, especially in regard to connecting families, studying and similar issues.

³ Dr. Stipe Ivanda, “Schengenski sporazumi i unutarnja sigurnost”, Zagreb, 2001, p. 17. “The third pillar reflects integration the least”.

The Schengen Agreement itself does not encompass all EU member states, without Great Britain and Ireland, with Iceland and Norway (from 2001), and Switzerland (from June 2005). It represents the example of a functioning multi-speed Europe. The Agreement however, does not define the EU's visa regime as this is done by the Council of Ministers with its Regulation from 2001.

Having in mind the complexity of the application of Schengen Information System, as well as the creation of the new Visa Information System (VIS) in the EU, and the need for full harmonization of administrative practice, the new EU member states have a transition period for the application of Schengen, but they also apply EU criteria towards third countries. Very often the application of the criteria is very rigid on the part of the new EU member states, which is confirmed by numerous examples.

EU criteria for classifying the countries

Council Regulation number 539/2001 with amendments 2414/2001 and 453/2003 on classifying the countries has criteria and country lists. The black list — countries whose citizens need visas consists of over 130 countries and the white list, countries whose citizens do not have the obligation of possessing a visa for entering the Schengen space, of around 40.

Criteria:

1. illegal migrations;
2. public politics and security;
3. international relations, and
4. regional implications and reciprocity.

The example of Romania and Bulgaria serve as an example for the liberalization of the EU's visa regime (Commission Proposal, EP Opinion, political agreement of the Council for Judicial and Internal Affairs on the level of EU ministers and formalization of the decision — Council Regulation which terminates the status of Romania and Bulgaria on the black visa list from 1995). There are opposite examples of transfers from the white to the black list — the example of Ecuador (2003) when the European Commission concluded that the set criteria were no longer met and proposed to the Council of Ministers that this country be put on the black list.⁴

EU demands: prevention of illegal migrations (readmission agreements as one of the ways of combating illegal migrations, but not the only one); efficient border control, security of travel documents and harmonization of national visa regimes with the EU's visa regime towards third countries.

Where are we?

⁴ Grupa 484, M. Ivanović, "Ka beloј šengenskoј listi", Belgrade, 2005, p. 17.

SCG successfully concluded preliminary negotiations on visa relaxations for certain categories of SCG citizens in Brussels in the end of April, 2006. On that occasion the EU preliminary accepted SCG's proposal for visa relaxations.

In the first place for selective liberalization are students and professors, and then business people, state officials, journalists and athletes as well as people who require medical treatment in the EU countries.

Negotiations are expected to start in the second half of 2006, after the Council of Ministers approves the mandate to the Commission.

Unfavorable elements in upcoming negotiations on visa relaxation:

- SCG does not have an agreement on operative cooperation with the Europol (like Romania, Turkey, Russia, Switzerland etc.);
- The EU criteria in visa policy towards third countries are not fully applied, especially towards African and Asian countries with high degree of immigration risk, i.e. not all countries from the black list are included;
- Institutional frameworks — because of Montenegro's secession after the recent referendum, the EU is faced with the need to prepare two mandates for negotiations.

Favorable: SCG has successfully participated in the Regional CARDS Program in the Areas of Visas, Asylum and Migrations 2004-2006 and has signed the National Strategy with the recommendations and action plan for harmonization with the EU standards in the area of migration policy.

What do future visa relaxations of the EU consist of?

According to the positive legal frameworks of the EU, which define possible deviations and relaxations in the process of submitting the visa application, if and according to amended Common Consular Instructions (December 2005) of the EU, which instituted a unified practice in the consulates of EU member states, the following visa relaxations are envisaged:

- decrease in the number of documents which are submitted with the application;
- absence of strict obligation for submitting the application in person;
- issuing visas for a longer period of time (1-5 years), especially intended for researchers residing in EU countries due to research projects, and business people;
- cheaper or free visas for children up to the age of 6, students, and scientists.

The EU predicted that the increase in prices, which is 60 EUR starting in 2007, will not apply for countries that start negotiations on visa liberalization by the end of 2006, but that the application of the increase in prices is postponed and prices set in the future Agreement will apply. The increase in prices was introduced at the request of France (April 2006). The announcement itself had a very negative reception in most of the third countries.

What is a positive trend in the direction of the white Schengen list is the fact that negotiations on visa relaxations is the first step in the upcoming visa relaxation of the EU towards countries of the Western Balkans. Macedonian representatives have also had preliminary consultations on visa relaxations with representatives of the EU, and the same procedure is predicted for other countries (Bosnia and Herzegovina and Albania).

Regional cooperation

Every country in the Western Balkans has adopted the National Strategy for Harmonization of Regulations and Administrative Practice with EU standards in the area of migration (December 2005) with foreseen deadlines for harmonization lasting from 6 months to 2 years.

Regional cooperation presents one of the important preconditions for visa liberalization with the EU. In this way, the EU indicates its position to relevant countries: "Do not ask from the EU what you are not prepared to give to one another in terms of freedom of movement, free trade and regional cooperation."

The current situation in the visa regime is an incoherent structure of the region: Croatia is on the white list, unlike other countries. Therefore, the EU appears as a centripetal factor in the region, contrary to the economic stimuli of the EU towards the region, which acts as a centrifugal element. The latest example is the creation of a regional free trade area, on the initiative of the EU and under the auspices of the Stability Pact starting from 2007, as a form of removing barriers.

The reason for the restrictive policy is the identification of the region as a primary source of illegal migrants and one of the main areas of transit. This is stated in the Europol Report (March 2006), which, together with Russia, Ukraine and Turkey, are the most commonly used countries for transit, mentions the Balkan region, and in particular Serbia and BiH, as well as Northern Africa.

The CEPS proposal (M. Emerson, Brussels) on the regional Schengen area (November 2005) preceded the Commission's initiative on visa liberalization with certain countries of the Western Balkans. Analyses of this influential Center pointed out the danger of creating a "ghetto" in the the Western Balkans due to the restrictive EU visa policy. On the other hand, the flows of organized crime, trafficking and smuggling humans, drugs and weapons remain untouched by the rules of the EU visa policy, warned CEPS experts. The essence of Mr. Emerson's proposal is based on the need that the EU stops demanding from new member states and candidate countries to apply a Schengen visa list for the countries of the Western Balkans. Border controls would still be retained for security reasons, and the passports would be checked according to the black list of criminals with the help of Schengen Information System (SIS).⁵

⁵ CEPS Policy Brief, No 85/November 2005, "An Interim Plan for South-East Europe — Customs Union with the EU and a Regional Schengen for the Free Movement of People", Michael Emerson, <http://www.ceps.be>

Lessons from regional cooperation

Through the past regional cooperation a regional network of representatives from ministries of the Western Balkan countries was established (CARDS seminar, MARRI conferences etc.). It is this regional network that is one of the necessary preconditions and basis for the further success of regional cooperation.

The new form of results produced: the regional understanding, which was helped by numerous theme seminars in which regional aspects, implications and the complexity of migration, asylum and visas in the Western Balkan region were discussed. In this way the representatives of these countries have realized that they share the same or similar problems which helped create regional understanding and responsibility for solving these issues on the regional level.

Identifying the national legal and administrative gaps in comparison to the EU Acquis on migration and visas produced a regional level of responsibility of governments — learning from neighbors successful examples (introduction of visa stickers according to the Schengen criteria, legal and administrative harmonization, etc.)

The application of the “Better my neighbor policy” on the issue of visas — SCG has bilaterally agreed to abolish visas for all countries in the Western Balkan region, except Albania. The good neighborhood principle is promoted by the numerous regional projects of cooperation between countries of the Western Balkans. In this way, the EU clearly states: “Do not ask from us what you are not prepared to give to one another in terms of freedom of movement”.

Finally, as a contribution to the harmonization of the migration and visa policy with EU standards Regional Recommendations within the CARDS AMV Program in the field of visas, asylum and migrations were adopted at the end of 2005. A Track for the integral solving of issues of asylum, migrations and visas in the countries of the Western Balkans was prepared within the regional CARDS AMV which was complemented by the EU and preceded the announcement of visa liberalization towards the countries of the Western Balkans.

Upcoming tasks — preconditions of EU’s visa liberalization

For reasons of efficient harmonization with relevant EU standards the following tasks and activities for every country of the Western Balkans have been identified:

- common visa register,
- forming normative frameworks synchronized with the EU principles — law on foreigners and according legal acts,
- integrated migration management — development, coordination and implementation of rules, institutional structures and procedures through inter-agency cooperation and participation in regional and international cooperation,
- further training of professional border police,
- a computerized system for border crossing surveillance,
- strategy for integrated border management and its application,

- taking over of border control by the police (process completed in Montenegro, and waiting for its completion in Serbia),
- police border cooperation with the neighbors,
- application of CARDS Regional Road Track for the countries of the Western Balkans,
- abandoning the practice of issuing visas at the border,
- progress in combating trafficking and illegal migration on the national and regional level.

EU — a moving target

The process of harmonization with the EU Acquis in the areas of visas and migrations is a very complex one and can be characterized as “jumping on a train moving at average speed”.

This is illustrated by the Acquis development in this area — the new EU Directive on Researchers (October 2005): liberalization of entry and stay for researchers from third countries.

The fact that the EU is permanently developing is proved by the latest Commission Proposal to move decision making on issues of police and judiciary cooperation from the third (intergovernmental) to the first pillar of the EU, with a supranational decision making system (Report on the Future of the EU, European Commission, May 2006). Commission’s proposal is based on Article 42 of the Treaty of the European Union.⁶ The explanation of this proposal is based on the need for a more efficient resolution of common border security of EU member states.

Another more recent example of the EU as a moving target is the Vienna Declaration on the Security Partnership (May 2006) between the EU and its neighbors. The Vienna Declaration is focused *inter alia* also on challenges of managing migration flows as one of the areas of security threats (besides terrorism, organized crime, drugs and corruption).

A Europe without borders or “Fortress Europe”?

The answer to the question is somewhere between the efforts to regulate migration as a social phenomena on one side, and prevention of criminal illegal migrations on the other.

The freedom of movement is set as a basic human right, as well as protection of refugees which is contrary to the justified fears of EU member states from the overflow of illegal migrants and the need for strengthened control of the EU’s external borders.

⁶ Quotidien EUROPE, No 9187, Tuesday, May 9, 2006.

Exempli causa: the abuse of issuing visas in the tourist sector under the mask of false hotel reservations as encouragement to illegal entries to the EU. This example is stated in the Europol Report from May 2006.

It can be concluded that the faith of the Western Balkan region towards the Schengen wall of the Union depends greatly on internal reforms in the areas of justice, internal affairs, successful regional and border cooperation, as well as prevention of illegal migration and trafficking.

THE MARRI STRATEGY AND PROGRAMME OF ACTION

by

*Qirjako Kureta*¹

The Migration, Asylum, Refugees Regional Initiative (MARRI) was formed within the context of the Stability Pact for South Eastern Europe. Since July 2004 this initiative is under regional ownership as part of the South-East European Cooperation Process (SEECp). MARRI is governed by its five MARRI Member States (Albania, Bosnia and Herzegovina, Croatia, Macedonia and Serbia and Montenegro), who meet twice a year at the MARRI Regional Forum. MARRI covers the following areas (including a cross-cutting programme Access to Rights (AtR)): asylum and refugees, migration, integrated border management and visa policy and consular cooperation. MARRI top priority is the enhancement of regional cooperation in its fields of activities among countries in the region, as a vital part of EU integration process and in line with the Thessaloniki Agenda for the Western Balkans.

The MARRI Regional Centre in Skopje was opened in November 2004 and has been fully functional as of January 2005 to serve as a secretariat to the MARRI Regional Forum and to accomplish MARRI political commitments.

In fact, the concept of regional ownership that has been developed by and within MARRI has proved to the utmost importance in voicing the needs and efforts of the MARRI Member States. All MARRI Regional Forum Members have their State Officials in the MARRI Regional Centre, acting as a hub for consultations, dialogue, training, capacity building, information exchange and other regional activities.

The MARRI Regional Centre has consolidated its role as a platform towards the European integration of the MARRI Member States, as well as its purpose of becoming the voice of the region. Regional ownership, as well as enhanced regional cooperation, has become an important asset by the works of the MARRI Regional Centre in Skopje.

¹ Mr. Qirjako Kureta is State Official of Albania in the MARRI Regional Centre dealing with visa and consular cooperation.

In our main political and strategic activities focus was given to intensified cooperation with the countries in the region and relevant international organizations to further create synergies. A number of formal and informal meetings with stakeholders and other relevant bodies has been conducted with the aim to further develop the MARRI initiative. Consultations with the relevant authorities in MARRI Member States, European countries and international actors (e.g. European Commission, IOM, ICMPD, UNHCR) were taken up and will be enforced henceforward.

The essential instruments of a coherent approach to MARRI issues comprises of three guiding principles: strengthening regional ownership, enhancing regional cooperation and supporting EU integration. In this context, the MARRI strategic approach to implementation of its work is set in the framework of four main areas:

1. *Policy harmonisation on a regional level.* MARRI provides a platform for regional cooperation and information exchange, bringing its countries together for joint discussions, establishing positions of a common interest and joint actions.
2. *Awareness Raising.* MARRI identifies mechanisms of harmonisation through awareness raising activities in order to strengthen regional cooperation.
3. *Legislation reform.* Meeting EU policy and EU *acquis* legislation standards, in all MARRI areas, and implementing reforms, is a key to a successful migration management and a necessity to support EU integration.
4. *State administration capacity building.* Strengthening the state structure and increasing their capacities to implement reforms remains a priority, whereas MARRI provides expert and technical assistance.

On the highest political level, the MARRI Regional Forum Ministerial Meeting held in Belgrade on 7 April 2006 emphasised the commitment for intensifying regional co-operation in MARRI fields by making better use of the existent mechanisms (i.e. the MARRI Regional Centre), as well as by facilitating exchange of information and experience in the region. This has been perceived as a strong commitment of the participating states to foster further regional cooperation and the harmonisation of current practice and legislation with the standards of the European Union.

Furthermore, in the Belgrade Declaration the Ministers of the MARRI Member States responsible for the area of migration, asylum and refugees underlined the importance of continuous dialogue between the Member States to promote security and stability, enhance the cooperation in the area of migration, asylum and refugees, and to strengthen the institutions dealing with it in our Member States in the Stabilisation and Association Process. In this context, they especially supported the concept of regional ownership, which proved to be essential for attaining the goals of the Initiative.

During the past Serbia and Montenegro Presidency of MARRI, there were efforts made by the MARRI Regional Working Group on Consular Cooperation in establishing a factual overview on these issues as a basis for developing early warning system. Mainly stressed the need of:

- Establishing a last cooperation for regular information and experience exchanges in the process of harmonisation with the acquis and EU standards;
- Establishing and agreed framework for development of a regional early warning and alerting system;
- Establishing a facilitated uniform visa regime for MMS citizens in the MARRI area and a common approach towards the conditionalities set by the EU for the facilitation of the visa regime.

I informed the participants in this meeting about the workshops to be organized by MARRI RC during this year.

There was also opening of the process of dealing with orderly migration, where MARRI started with a process of exchange of information and networking on labour migration. There was also significant regional cooperation in the field of readmission, where the signing of the EU-Albania Readmission Agreement is especially taken note of as well as the separate bilateral readmission agreements between the EU Member States and other MARRI Member States, respectively. A mechanism for regular gathering and exchange of information in the field of asylum was also established.

As far as the specific work of the MARRI Regional Centre, we emphasise the importance of the adoption of the *Strategy and Programme of Action of MARRI for 2006 and 2007*, adopted during the MARRI Ministerial Regional Forum held in Belgrade in 7 April 2006, for its future work. The Programme of Action represents an operational plan to realise the goals set out by the MARRI Strategy. It provides a practical and coordinated framework for action in the four main MARRI areas: asylum and refugees, migration, integrated border management and visa and consular cooperation issues. The strategy for realisation of MARRI Regional Centre goals is prepared with reference to National Action Plans in the region and with input from offices of national coordinators in MARRI fields. The aim of the document is to demonstrate how cooperation on regional and national level and how the MARRI Regional Forum can facilitate intensified regional co-operation and is able to assist the MMS on their way into the European Union.

In a relative short period (between November 2005 and May 2006) MARRI Regional Centre organised these main activities:

*Meeting of National Coordinators on Anti-trafficking
in Persons, Ohrid, 22 November 2005*

During the meeting the respective national coordinators agreed on further enhancement of their regional cooperation through the regional platform of anti-trafficking in Human Beings in the MARRI Member States. The platform envisages two meetings in 2006, during which the national coordinators together with special invitees from the neighbouring countries, the European Commission, international organisations and other relevant stakeholders would discuss current regional cooperation, activities, projects, important issues on suppressing this phenomenon as well as come to join conclusion and commitments for the future actions.

MARRI Regional Forum in Prčanj, 28-29 November 2005

Officials of the Ministries of Foreign Affairs and relevant representatives responsible for issues of migration, asylum and refugees of MMS reaffirmed its commitments for managing population movements in South-eastern Europe and agreed to continue to give its full contribution to future coordination and realisation of MARRI activities and priorities.

National Round Table on Migration, Podgorica, 20 February 2006

This meeting aims to assist in the creation of the national working groups on migration in the five countries of the region, which should be a basis for a regional approach to the migration issues. The next step is the creation of a Regional Group of MARRI Member States Representatives to meet regularly within the MARRI Regional Centre in Skopje. Its primary objective is to evaluate experiences and work towards strengthening regional cooperation and harmonizing standards in the field of migrations, while shaping future common approaches regarding new migration-related trends and challenges in the region, in line with the Tirana Declaration of April 2005 and national strategy developed within the Regional CARDS Project on Asylum, Migration and Visa in the WB countries.

Meeting of Regional Working Group on Consular Cooperation, Skopje, 22-23 February 2006

The MARRI Regional Centre in Skopje organised a second meeting of the Regional Working Group on Consular Cooperation (RWGCC) on 22-23 February 2006. The participants were representatives of the Consular Departments of the MARRI Member States, who followed-up on the first Meeting of the RWGCC held in Skopje on 13-14 September 2005.

(RWGCC is established by decision of the Ministers on MMS in Regional Forum, held in Tirana on April 2005. It was a expression of the will of the five MMS to set up a regional mechanism to support cooperation between them. The mission of RWGCC is to make functional network of consular departments in five MFAs/MoIs, based on the philosophy of regional responsibility for protection of area of five MMS from irregular migration and human trafficking and increasing of regional cooperation in visa field, in line with EU standards. The activity of the RWGCC aims at identifying the prerequisites of building and consolidation of the mutual trust and constructing the basis of harmonizing of policies, procedures and infrastructures in visa field).

The overall objective of the meeting was to discuss and adopt the plan of activities in the field of consular cooperation for 2006 to be focused on in two main fields:

1. Visa harmonisation (policies, institutions, regimes, practices, procedures etc) in line with EU standards;

2. Exchange of information on irregular migration and human trafficking issues, related to falsifying of passport and visas, training our experts on how criminals attempt to forge and falsify travelling documents etc.

*Workshop on Labour Migration for Integration/
Development in WB, Zagreb, 22-24 February 2006*

It gathered representatives from the Governments of MMS, while presentations were held by IOM, UK and regional experts. The Workshop serves as a platform for discussions for the further development of policies and programmes on migration within/from the Western Balkans, in a spirit of positively implicating their economic and employment dimensions while contributing to combating possible irregular movements. Discussions included both the analysis of possibilities for intraregional labour migration and the analysis of the impact of labour migration from the region to third countries at both ends of the migration spectrum.

In order to answer regional migration challenges, MARRI also developed a cross-cutting program labelled *Access to Rights (AtR)*, whose main goal is to strengthen or reform legislative and administrative systems to guarantee access to social and economic rights for refugees, returnees, displaced, minorities and other vulnerable groups. Such a strategy underlines provision of technical expertise for States to adopt EU instruments (*acquis communautaire*) to deal with solutions of sustainable return and social integration. During the year 2005, AtR developed and prepared several projects for implementation (e.g. in Macedonia and Montenegro). In addition, AtR team has developed project ideas for implementation in Serbia, Bosnia and Herzegovina, Albania, and is exploring possibilities of continued cooperation in Macedonia and Montenegro. Up to date activities also include the second AtR Regional Workshop on Integration Issues (Returnee integration from readmission agreements) held in MARRI Regional Centre in Skopje on 15 December 2005, which was attended by five MARRI Member States.

Regarding the next steps, MARRI Regional Centre in Skopje, through realisation of specific projects, supports the implementation of national programs in further improving strategies and action plans that will result in increase of regional ownership and regional cooperation among relevant actors.

As of 7 April 2006, Bosnia and Herzegovina took over the year-long Presidency of the MARRI Regional Forum. Along with the MARRI Regional Centre in Skopje, special efforts are to be invested in the process of further development of regional ownership principle.

In the capacity of MARRI Presidency, Bosnia and Herzegovina shall:

- *advance regional ownership and cooperation, which is imperative for successful implementation of MARRI objectives.*
- *emphasise the relevance of establishing and developing cooperation with other international organizations and initiatives in the region based on the principle of complementarity.*

- *increase cooperation between governmental agencies responsible for migration, asylum and refugees on regional and national level with an objective to develop good migration governance in the MARRI region.*
- *endorse development of capacity building in the field of migration, asylum and refugees.*
- *support activities related to follow up of CARDS Regional Project on Asylum, Migration and Visa in the Western Balkans.*
- *encourage MARRI Member States in the process of strengthening harmonisation of existing policies, synergising acquired knowledge, experiences and best practices on the road towards EU integration.*

Bosnia and Herzegovina shall support to maximum extent the MARRI Regional Centre in implementation of its Strategy and Programme of Action prioritising the following areas:

1. Implementation of readmission agreements in the MARRI region;
2. Increased cooperation in the field of fight against illegal migration, anti-trafficking and anti-smuggling;
3. To develop sustainable and effective asylum systems including protection of refugees and their integration as well;
4. Exchanging the best practices on migration management;
5. To enhance durable solutions for reintegration of labour emigrants and explore possibilities of the impact of remittances on development in the region;
6. To maintain and support durable solutions related to the access to rights of returnees;
7. To pursue complementarity with other stakeholders in the region involved in border management process, namely Regional CARDS and Ohrid Border Process.

More specifically, the focus shall be given to the following projects of the MARRI Regional Centre in Skopje in the upcoming period:

- 1) *Workshop on Implementation of Readmission Agreements — Technical Aspects.*
(In the second half of June)

The objective of the workshop will be:

- To identify the gaps in the field of implementation in regard to admission of the nationals of MARRI Member States as well as third country nationals and questions related to successful return policy
- To develop a regional strategy and network of national experts. This will enable countries to implement concluded readmission agreements more successfully;
- The strengthening of the capacities of national institutions in combating illegal transit migration;

— To increase regional cooperation in this field.

It is envisioned that several experts from EU Member States and Switzerland get invited to the Workshop.

2) Workshop on Management of Illegal Transit Migration in MARRI Region

This workshop shall be co-organised with Budapest Process, i.e. it's Working Group on SEE. The gathering will provide a good opportunity to increase the co-operation between policy makers and law enforcement agencies, with the involvement of SECI and other international organisations. In this respect, MARRI framework serves as the ground for the awareness of the region on illegal flows in changing circumstances — response on political imperatives in the region. The next step would be the creation of permanent Working Group within MARRI, providing exchange of information and facilitating co-operation between the institutions in the region, its neighbourhood and other interested States and organizations.

3) Workshop on Establishment of Co-operation between Academia and Governmental Institutions

This Workshop aims to create a specific approach towards awareness-raising transfer of practical experience on implementation of legislation on migration in practice to the students of law, journalism, social and political science. It is foreseen for Autumn 2006 where the mentors form the faculty and the relevant ministries should monitor the results. The expected most valuable outcome would be the knowledge gained through this very specific co-operation and the interest of some of the students to continue their professional career dealing with migration. The end result of the project will be demonstrated on regional level, with further co-operation of the universities in the region and numerous other follow-ups, such as moot courts and other forms of competition.

4) Workshop on Migration Management Systems in MARRI Region

This concept is based on the results of Regional CARDS Visa, Migration and Asylum project and is foreseen for the end of October or mid November 2006. The representatives from new EU Member States shall be invited, whereas they will present and share their best practice in this field. The Workshop related to this one would be targeted to the Parliamentarians — to raise the awareness on migration governance and the responsibility of politics for all the aspects of migration policy (interaction of different policies -economic, employment, education, demographics, health, social, security and defence).

5) Workshop on Labour Migration

This Workshop shall be follow up of the Workshop on Labour Migration for Integration/Development in Western Balkans held in Zagreb on 22-24 February

2006. It will be dedicated to the potential of return of retired economic emigrants to the region and the potential of their possible investment of remittances, as well as development.

6) Workshop on Anti-trafficking

In this Workshop, MARRI is envisioned to serve as the platform to articulate further steps to enhance new challenges in the region, in particular about the indicators on increased growth of smuggling versus trafficking (it is foreseen that the project thematically dedicated to these aspects is to be launched in the Autumn this year -in the framework of USAID and ICMPD). MARRI shall be a member of Advisory Board and shall facilitate co-operation between national co-coordinators for Trafficking of Human Beings.

As conclusion, I would like to stress that the work of the MARRI Regional Centre in Skopje, which is both promising and difficult, paves the way for progress on MARRI issues, taking account of the root causes of migration and its consequences. It creates synergy between the regional actors who have an overview of the policies undertaken in both the European Union and in the MARRI Member States. That sort of overview has enabled the MARRI Regional Centre to propose and implement practical measures which are founded on an in-depth analysis of the political and socio-economic factors in the countries in the region.

As a general approach, solutions to the problems of the region should emanate from the countries of the region. It is clear that institutionalised multilateral regional cooperation functions in a complementary and supportive way to the European integration process of the countries in the region. Coordination of action and common goals boost their European course, strengthen their voice and reinforce EU efforts to form an effective regional policy. In this respect, the MARRI Regional Centre experts have worked in close and fruitful cooperation with a number of international governmental organizations managing to strengthen its partnerships with the relevant stakeholders and counterparts involved in relevant areas on the national, the regional and the international level.

The operational progress was achieved, but several preconditions must be assured to continue with success in the future, i.e. regional ownership, common interest and sustainability.

It is absolutely clear that the future activities of MARRI are to be seen in the framework of regional cooperation and regional ownership, strengthening the role of MARRI as a “voice of the region”.

CONCLUSION AND RECOMMENDATIONS

RECOMMENDATIONS FROM THE REGIONAL ROUNDTABLE CONFERENCE “THE WESTERN BALKANS: REGIONAL RESPONSE TO THE VISA LIBERALIZATION ISSUE”

To the EU countries and EC:

- EU visa policy toward WB countries is hampering reforms in the WB countries and the European integration process
- We are inviting international non-governmental and intergovernmental organizations to continue their support in reform processes in related sectors and the promotion of the visa liberalization issue
- We support the current initiative of the EC and talks with the WB countries on the facilitation of the visa regime for certain categories of citizens
- Simultaneously with the visa facilitation negotiations, the EU should draft in cooperation with the WB countries, a roadmap for visa abolishment. The roadmaps should rely upon the results of the EC CARDS programme/projects which are/were implemented and actual achievements of each country in reforms in the fields of migration, asylum, visa and integrated border management

To the WB countries:

- To facilitate/liberalize the visa regime within the WB region
- All WB countries should accelerate reforms towards achieving the EU standards in the area of the visa, asylum, migration and border management
- WB governments, using existing mechanisms of regional cooperation (MARRI, SEECP etc.) and through multilateral consultations, should permanently cooperate in:
 - Periodic analysis of the achievements of each country (with special attention to the periodic statistical reports on migration as a common ground for defining regional migration policies),
 - Exchange experiences and best practices in proper reforms and

- Share in the examples of other Balkan countries and new EU member states
- In accordance with achieved results in reforms on a regional level, the governments should formulate regional proposals to the EU concerning the gradual achievement of the objective of visa abolishment for all WB countries
- The Civil sector in the region should strengthen cooperation in further promoting the idea of visa abolishment through:
 - Joint activities towards raising the awareness of the issue at the regional level
 - Joint advocacy towards the EU and its member states.

The main conclusion would be to request from EU to make urgent changes in its visa regime, so as to facilitate movement of people from the Western Balkans to the Union. Then, the West Balkan countries should focus their attention on making a common “road map” for visa abolishment. At the same time, the Balkan countries are requested to facilitate movement of people in the region by making changes in their visa policies.

Prof. dr Blagoje BABIĆ

The EU visa policy should be liberalised through its co-operation with the West Balkan countries so as to prevent further slowdown of the reforms and their integration into EU. Building of a common “road map” for visa abolishment should be based on CARDS programmes and that would bring about further progress in the fields that regulate migration, asylum and integrated border management.

Dr Duško DIMITRIJEVIĆ